STATE OF COLORADO

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Executive Director and Chief Medical Officer

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

August 14, 2012

Gary Wiedeman
Ed Wiedeman Dairy
5880 W. 49th Street
Greeley, Colorado 80634

RE: Compliance Order on Consent, Number: AC-120808-1

Dear Mr. Wiedeman:

Enclosed for the Ed Wiedeman Dairy's 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 33). 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 me at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Kelly Morgan
Enforcement Specialist
Water Pollution Control Compliance & Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Weld County Department of Public Health and Environment
Natasha Davis, EPA Region VIII (davis.natasha@epa.gov)

Engineering Section, CDPHE
Dick Parachini, Clean Water Program, CDPHE
Phyllis Woodford, Environmental Agricultural Program, CDPHE
Sean Scott, Environmental Agricultural Program, CDPHE
Chad DeVolin, Environmental Agricultural Program, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Tania Watson, Compliance Assurance, CDPHE
Janine Baratta, AGPROfessionals, LLC

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: AC-120808-1**

IN THE MATTER OF: **ED WIEDEMAN d/b/a ED WIEDEMAN DAIRY**
WELD COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Ed Wiedeman. The Division and Ed Wiedeman may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order, Number: CO-100517-1 (the "NOV/CDO"), that the Division issued to Edwin Wiedeman and Gary Wiedeman d/b/a the Wiedeman Dairy on May 17, 2010.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Ed Wiedeman, the Facility, and Ed Wiedeman's compliance with the Act and its implementing control regulations.

3. Ed Wiedeman owns and/or operates the Ed Wiedeman Dairy, an animal feeding operation ("AFO") as defined by 5 CCR 1002-81, §81.3(2), located in the vicinity of 5880 W. 49th Street, near the City of Greeley, Weld County, Colorado (the "Facility").

4. At all times relevant to the violations cited herein, Ed Wiedeman was a sole proprietor in the ownership and operation of the Ed Wiedeman Dairy.

5. Ed Wiedeman is a "person" as defined by §25-8-103(13), C.R.S. and its implementing control regulation, 5 CCR 1002-81, §81.3(24).

6. Division records establish that the Facility has the capacity to stable or confine 677-699 mature dairy cows and therefore is a "Medium Animal Feeding Operation" as defined in 5 CCR 1002-81, §81.3(18).

7. Information obtained during a May 8, 2007, Department inspection establishes that Ed Wiedeman owns 500 acres of land used for the land application of manure and process wastewater from the Facility. The land application area includes a center pivot irrigated field located just east of the Facility's production area (the "Pivot Field"). Process wastewater runoff from the Pivot Field generally flows to the Facility's east pond. During the May 8, 2007, inspection, the Facility had incomplete records of land applications of process wastewater. According to a May 20, 2009, Environmental Protection Agency ("EPA") inspection, liquid and solid manure is land applied via flood irrigation to approximately 110 acres of land owned by the Facility. However, no land application records were available at the time of the May 20, 2009, inspection.

8. On January 26, 2010, the Weld County Department of Public Health and Environment (the "WCDPHE") received a citizen complaint that process wastewater from the Facility was flooding the complainant's property located south of West 49th Street in the Dos Rios Estates Subdivision.

9. On January 26, 2010, in response to the citizen complaint, a representative from the WCDPHE (the "WCDPHE inspector") conducted an inspection of the Facility and the surrounding area.

10. On January 27, 2010, the WCDPHE received a second citizen complaint alleging that wastewater from the Facility was flooding and washing out their children's play area located at their home in the Dos Rios Estates Subdivision.

11. On January 27, 2010, representatives from the WCDPHE, the EPA, and the Department conducted a second inspection of the Facility and the surrounding area.

DISCHARGE WITHOUT A PERMIT

12. Pursuant to §25-8-501(1), C.R.S., no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.

13. During the January 26, 2010, site inspection, the WCDPHE inspector observed that process wastewater was running off the Pivot Field and discharging into the north borrow ditch along side of 49th Street. The WCDPHE inspector followed the discharge flow path and further observed that process wastewater from the Pivot Field flowed east down the north borrow ditch of 49th Street to a culvert (located near the eastern boundary of the Pivot Field), south through the culvert under 49th Street, down an unnamed drainage and ditch northeast and north of 48 and 49 Caballo Trail in the Dos Rios Subdivision, and into a concrete structure and underground pipe. The process wastewater exited the pipe into the Dos Rios Subdivision stormwater system east of 48 Coyote Trail in the Dos Rios Subdivision, flowed southeast in the stormwater ditch for the Dos Rios Subdivision, into the concrete stormwater ditch located west of 47th Avenue, southwest in the concrete stormwater ditch to

the stormwater drain, southeast from the concrete stormwater drain through a pipe under 47th Avenue, through a black corrugated pipe under the large Evans Town Ditch, and into a natural drainage that outlets into a side channel of the South Platte River.

14. During the January 27, 2010 Facility inspection, a representative from the Ed Wiedeman Dairy (Gary Wiedeman) informed the WCDPHE, EPA, and the Department inspector that Facility personnel had pumped process wastewater from the Facility's northeast pond to a pipe running north and into a long length of gated pipe running east through the Pivot Field. Gary Wiedeman informed the inspectors that the pumping operation occurred from approximately 1:00 pm to approximately 3:30 pm on January 26, 2010. Gary Wiedeman further informed the inspectors that process wastewater was released through opened gates in the pipe and flowed south through the Pivot Field. Gary Wiedeman informed the inspectors that upon knowledge that process wastewater had run off the end of the Pivot Field and flowed south into some neighbors' yards he dispatched a dairy crew to construct soil dikes to block the flow of process wastewater onto the neighbors' lots.

15. During the January 26, 2010, inspection, the WCDPHE inspector took samples of the process wastewater that was discharging from the Pivot Field and into the side channel of the South Platte River. Laboratory analysis of the WCDPHE's January 26, 2010, discharge water samples establishes that the process wastewater discharged from the Pivot Field and into the South Platte River contained, among other things, total coliform, E. coli, NH_3-N, Nitrate, and BOD in the following concentrations:

ED WIEDEMAN DAIRY DISCHARGE WASTEWATER SAMPLE RESULTS FROM JANUARY 26, 2010, INSPECTION					
Sample Location	Total Coliform (cfu/ 100 ml)	E. coli (cfu/ 100 ml)	NH3-N (mg/l)	Nitrate (mg/l)	BOD (mg/l)
Culvert Inlet North Side of 49th Street	1,986,280	920,800	440	1.09	2,280
Culvert Outlet South Side of 49th Street	>2,419,200	770,100	440	1.06	2,400
Pooled process wastewater near 49 Coyote Trail	1,203,310	517,200	390	2.51	2,440
Drainage point entering South Platte River side channel	770,100	344,800	296	6.85	2,000

16. Total coliform, E. coli, NH_3-N, Nitrate, and BOD are "pollutants" (or indicators thereof) as defined by §25-8-103(15), C.R.S., and 5 CCR 1002-81, §81.3(25).

17. The South Platte River is a "state water" as defined by §25-8-103(19), C.R.S. Further, the South Platte River is a "surface water" as defined by 5 CCR 1002-81, §81.3(34) and a "waters of the U.S." as defined by 5 CCR 1002-81, §81.3(41).

18. Division records establish that at the time of the discharge described in paragraphs 13 through 15 above, the Facility met the definition of a "Medium Concentrated Animal Feeding Operation" ("Medium CAFO") as defined by 5 CCR 1002-81, §81.3(19).

19. Division records establish that at the time of the discharge the Facility was a "point source" as defined by §25-8-103(14), C.R.S.

20. Division records establish that Ed Wiedeman does not have any permits authorizing the discharge of pollutants (process wastewater) from the Facility into the South Platte River.

21. Ed Wiedeman's discharge of pollutants (process wastewater) into the South Platte River constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.

22. Ed Wiedeman's discharge of pollutants (process wastewater) into the South Platte River constitutes an unauthorized discharge of pollutants from a point source into state/surface water in violation of §25-8-501(1), C.R.S.

FACILITY DESIGNATION

23. Pursuant to 5 CCR 1002-81, §81.4, the Division may designate any AFO as a CAFO upon performing an on-site inspection and determining that it reasonably could be a significant contributor of pollutants to waters of the U.S.

24. Pursuant to 5 CCR 1002-81, §81.4 (3)(a), where an AFO is at risk of being designated as a CAFO, the AFO operator may submit to the Division an approvable work plan and associated timeline for reducing actual or potential environmental impacts such that the Division would not designate the AFO as a CAFO.

25. Division records establish that Ed Wiedeman submitted an approvable work plan that included information specifying and describing the Best Management Practices ("BMPs") that the Facility has implemented and will maintain to comply with the requirements of 5 CCR 1002-81, §81.9 and therefore, the Facility will continue to operate as an AFO.

26. The Division acknowledges that Ed Wiedeman satisfactorily performed all of the obligations and actions required under the May 17, 2010, Notice of Violation / Cease and Desist Order.

ORDER AND AGREEMENT

27. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the NOV/CDO, the Division orders Ed Wiedeman to comply with all provisions of this Consent Order, including all requirements set forth below.

28. Ed Wiedeman agrees to the terms and conditions of this Consent Order. Ed Wiedeman agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-

602 and 605, C.R.S., and is an enforceable requirement of the Act. Ed Wiedeman also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Ed Wiedeman 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.

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

CIVIL PENALTY

30. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, Ed Wiedeman shall pay Seven Thousand Dollars ($7,000.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Seven Thousand Dollar ($7,000.00) civil penalty for the above violation(s) and Ed Wiedeman agrees to pay half of the penalty within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee and to pay the other half of the penalty within one (1) year of the issuance of the Penalty Order by the Executive Director or his designee. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

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

31. Failure to submit full payment of any installment by the due date described in paragraph 30 above shall be deemed a violation of this Consent Order. In the event that Ed Wiedeman fails to comply with any of the terms or provisions of this Consent Order relating to payment of the civil penalty, Ed Wiedeman shall be liable for payment of the outstanding balance of the civil penalty within thirty (30) days of receipt of written demand by the Division. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to the address specified in paragraph 30 above.

SCOPE AND EFFECT OF CONSENT ORDER

32. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the NOV/CDO.

33. 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 Ed Wiedeman 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.

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

35. Notwithstanding paragraph 29 above, the violations described in this Consent Order will constitute part of Ed Wiedeman'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 Ed Wiedeman. Ed Wiedeman agrees not to challenge the use of the cited violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

36. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the NOV/CDO. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof.

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

38. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.

39. Upon the effective date of this Consent Order, Ed Wiedeman 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.

40. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

41. 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-CAS-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 Ed Wiedeman d/b/a Ed Wiedeman Dairy:

Gary Wiedeman, Manager
Ed Wiedeman Dairy
5880 W. 49th Street
Greeley, CO 80634

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

43. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty following closure of the public comment period referenced in paragraph 33. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

BINDING EFFECT AND AUTHORIZATION TO SIGN

44. This Consent Order is binding upon Ed Wiedeman and its officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR ED WIEDEMAN d/b/a ED WIEDEMAN DAIRY:

Gary W Wiedeman Date: 7-30-12
Gary Wiedeman, Manager

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Date: 8/8/12
Steve Gunderson, Director
WATER QUALITY CONTROL DIVISION