

STATE OF COLORADO

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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

November 15, 2010

Mr. George H. Ottenhoff, Registered Agent
Great Western Dairy, LLC
P.O. Box 326
Greeley, CO 80632

Certified Mail Number: 7007 0220 0001 0159 6369

RE: Service of Notice of Violation/Cease and Desist Order, Number: CO-101112-2

Dear Mr. Ottenhoff:

Great Western Dairy, LLC 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 Great Western Dairy, LLC 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., Great Western Dairy, LLC 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 Great Western Dairy, LLC 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.

Sincerely,



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

Enclosure(s)

cc: Weld County Dept of Public Health & Environment
Casey DeHaan, 39390 Weld County Road 39, Ault, CO 80601

ec: Aaron Urdiales, EPA Region VIII
Doug Camrud, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Gary Beers, Permits Unit, CDPHE
Michael Beck, OPA
Phyllis Woodford, Environmental Agriculture Program, CDPHE
Chris Hill, Environmental Agriculture Program, CDPHE



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: CO-101112-2

IN THE MATTER OF: GREAT WESTERN DAIRY, LLC
CDPS PERMIT NO. COA-931000
CERTIFICATION NO. COA-931084
WELD COUNTY, COLORADO

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, Great Western Dairy, LLC ("Great Western Dairy") was a limited liability company in good standing and registered to conduct business in the State of Colorado.
2. Great Western Dairy 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. Great Western Dairy owns and/or operates a concentrated animal feeding operation ("CAFO") located at 39390 Weld County Road 39, which is east of the Town of Ault in Weld County, Colorado (the "Facility"). The Facility has the capacity to confine 4,900 mature dairy cows, 2,100 heifers, and 1,000 calves for forty five (45) days or more in a 12-month period and, therefore, is a Concentrated Animal Feeding Operation ("CAFO") as defined by 5 CCR 1002-61, §61.2(17).
4. Division records establish that the Facility consists of two small land application fields parallel to and directly east of County Road 39; a row of corrals and the milking parlor east of the land application fields; another set of corrals to the east with a manure storage area at the northern end of the corrals; a solids settling structure to the east of the manure storage area; a feed and commodities storage area south of the solids settling structure; two wastewater ponds (the "North Pond" and the "South Pond") east of the feed and commodities storage area; and three land application sites that surround the production area.

5. Division records establish that process wastewater can flow freely between the North Pond and South Pond over a spillway between the ponds. Discharges from the Facility occur from the North Pond at the emergency spillway. The spillway includes a large concrete structure at the discharge point with culverts that direct discharges under an irrigation ditch and into an adjacent field.
6. Division records establish that all wastewater, and a portion of the solid manure generated at the Facility, is applied to Great Western Dairy's land application sites. The solid manure that is not land applied is transferred off site.
7. Great Western Dairy was issued certification number COA-931084 (the "Certification") under Colorado Discharge Permit System general permit number COA-931000 (the "Permit"). The Certification was issued and became effective September 28, 2009. The Permit and Certification were scheduled to expire on August 13, 2010, but the Permit and Certification have been administratively extended by the Division.

FAILURE TO PROPERLY DESIGN, INSTALL, OR MAINTAIN IMPOUNDMENT

8. Pursuant to Part III.E(1)(a) of the Permit, Great Western Dairy must provide adequate storage capacity at the Facility to ensure compliance with the effluent limitations specified in Part II.A(1) of the Permit.
9. Pursuant to the Certification, the volume of runoff generated at Great Western Dairy as a result of a 25-Year, 24-Hour Storm is greater than that from a Chronic Storm.
10. Pursuant to Part III.E.1(b) of the Permit, except during the designated storm event specified in the Certification, manure and process wastewater stored in impoundments and terminal tanks shall be removed as necessary to maintain a minimum of two (2) feet of freeboard.
11. Pursuant to Part III.E.1(c) of the Permit, whenever the storage capacity of the Facility's impoundments and tanks are less than the volume required to store runoff from a 25-year, 24-hour storm event, the structures shall be dewatered to a level that restores the required capacity once soils on land application sites have the water holding capacity to receive process wastewater.
12. Pursuant to Part III.E.1(d) of the Permit, Great Western Dairy shall properly operate and maintain its impoundments and tanks in order to have the manure and process wastewater storage capacity required to contain a 25-year, 24-hour storm event as required by Part III.E.1(a) of the Permit.
13. On Monday, May 17, 2010, the Department's Environmental Agriculture Program (the "Ag Program") received a voicemail from Great Western Dairy's consultant, AGPROfessionals LLC ("AgPro"), reporting that on Saturday, May 15, 2010, around 4:00 p.m., Great Western Dairy's North Pond and South Pond (the "Impoundments") began discharging as a result of a heavy rainstorm that started around 2:00 p.m. on May 15, 2010.
14. On Tuesday, May 18, 2010, the Ag Program was informed by AgPro that on Saturday May 15, 2010, process wastewater flowed over the east side of the Impoundments as a result of Great Western Dairy personnel placing dirt in the spillway in the North Pond in an effort to block the spillway and prevent a discharge from the North Pond. Eventually, the spillway blockage failed and wastewater began flowing over the spillway. The process wastewater from the North Pond flowed through the land application field

located to the northeast of the Facility, entered the Spring Creek drainage, and subsequently entered the ponds of two neighboring properties. AgPro stated that as of Tuesday, May 17, 2010, process wastewater was still trickling over the spillway, but was not leaving the Facility's property. AgPro also advised that Great Western Dairy personnel were actively preparing to land apply process wastewater from the Impoundments in order to re-establish the required storage capacity (the "pumping level").

15. On Thursday, May 20, 2010, AgPro informed the Ag Program that as of Wednesday, May 19, 2010, process wastewater was no longer trickling over the spillway. AgPro also advised that two of Great Western Dairy's neighbors had been contacted regarding cleanup of the process wastewater on their property. AgPro further advised that one neighbor did not request any cleanup of discharged process wastewater. The other neighbor requested that Great Western Dairy provide aeration for his pond to prevent any fish loss. Great Western Dairy provided temporary aeration equipment and agreed to replace any lost fish.
16. On Friday, May 21, 2010, AgPro submitted on behalf of Great Western Dairy a preliminary written report of the process water discharge, including an estimated volume (5-6 acre feet), date and time of the discharge, flow path of the discharge, and a statement that Great Western Dairy was land applying wastewater to reduce, eliminate, and prevent the recurrence of the non-complying discharge.
17. On Wednesday, June 2, 2010, at the request of the Ag Program, AgPro submitted information on behalf of Great Western Dairy establishing that the last time the Facility had the required storage capacity in the Impoundments to contain a 25-year, 24-hour storm event was January 4, 2010.
18. Great Western Dairy's failure to provide adequate storage capacity to contain the process water runoff associated from the Saturday, May 15, 2010 storm, a storm event that was less than a 25-year, 24-hour storm, constitutes violations of Part II.A.1 and Part III.E(1)(a) of the Permit.
19. Great Western Dairy's failure to remove manure and/or process wastewater stored in the Impoundments in order to maintain a minimum of two (2) feet of freeboard constitutes a violation of Part III.E(1)(b) of the Permit.
20. Great Western Dairy's failure to dewater the impoundments to a level that restores the required storage capacity whenever the storage capacity of the Impoundments is less than the volume required to store runoff from a 25-year, 24-hour storm event constitutes a violation of Part III.E(1)(c) of the Permit.
21. Great Western Dairy's failure to properly operate and maintain the Impoundments to have the manure and process wastewater storage capacity to contain a 25-year, 24-hour storm event as required in Part III.E.1 of the Permit constitutes a violation of Part III.E(1)(d) of the Permit.

NOTICE OF VIOLATION

22. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Great Western Dairy has violated the following sections of the Permit:

Part III.E.1(a) of the Permit, which states, “Provide adequate storage capacity to ensure compliance with the effluent limitations specified in Part II.A.1 of this Permit...”

Part III.E.1(b) of the Permit, which states, “Except during the designed storm event specified in the certification on page one of this general permit, manure and process wastewater stored in impoundments and terminal tanks shall be removed as necessary to maintain a minimum of two (2) feet of freeboard...”

Part III.E.1(c) of the Permit, which states, “Whenever the storage capacity of impoundments and tanks is less than the volume required to store runoff from the storm event specified in the certification on page one of this general permit, the structures shall be dewatered to a level that restores the required capacity once soils on a land application site have the water holding capacity to receive process wastewater.”

Part III.E.1(d) of the Permit, which states, “Impoundments and tanks shall be properly operated and maintained to have the manure and process wastewater storage capacity required in Part III.E.1(a), as applicable to the facility certified under this permit.”

REQUIRED CORRECTIVE ACTION

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

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

Furthermore, the Division hereby orders Great Western Dairy to comply with the following specific terms and conditions of this Order:

24. Within sixty (60) calendar days of receipt of this Order, the Great Western Dairy shall amend the Nutrient Management Plan (the “NMP”) to include best management practices and procedures necessary to ensure that the Facility’s impoundments maintain the capacity required to store runoff from a 25-year, 24-hour storm event. Where additional land application sites are proposed, the Great Western Dairy shall submit a formal permit amendment application requesting the addition of the proposed land application sites. The amendment request must include a map illustrating the location of all current and proposed land application sites for the Facility. Where manure and/or process wastewater is transferred to a third party, the Great Western Dairy shall submit, within sixty (60) calendar days of receipt of this Order, a

certification stating that the Great Western Dairy will comply with the terms and conditions of Part III.F of the Permit.

25. Within thirty (30) calendar days of receipt of this Order, the Great Western Dairy shall retain the services of a qualified entity (experienced in habitat restoration) and complete an evaluation of the discharge impacted segment of Spring Creek, Rusco Pond and Schmidt Pond, and any impacts on aquatic wildlife, for consideration of remedial actions. Within thirty (30) calendar days of completing the evaluation, Great Western Dairy shall submit to the Division: a) a report outlining the findings from the evaluation and remedial actions implemented to date; b) a plan for further remediating process wastewater impacted areas, if applicable and necessary; and c) a time schedule for completing all further remedial activities of the process wastewater impacted areas. The submitted plan and time schedule shall become a condition of this Order and Great Western Dairy shall comply with the plan and time schedule as submitted unless notified by the Division, in writing, that an alternate plan or schedule is appropriate. If the Division imposes an alternate plan or schedule, it shall also become a condition of this Order. Within fifteen (15) calendar days of completing the remediation activities (if applicable), Great Western Dairy shall submit a final report to the Division outlining Great Western Dairy's remedial actions and evidence that the actions resulted in fulfillment of the plan or alternate plan, as applicable.
26. The Great Western Dairy shall submit monthly progress reports to the Division outlining efforts taken to achieve compliance with this Order. The first report shall be submitted to the Division on or before December 30, 2010. At a minimum, each report shall outline activities undertaken in the current reporting period and planned activities for the next month to remain in compliance with this Order. In addition, each progress report shall include a copy of the monitoring logs maintained in accordance with Part III.H.2(iv) of the Permit.
27. If Great Western Dairy becomes aware of any situation or a circumstance that impairs their ability to comply with any condition or time schedules set forth by this Order, Great Western Dairy shall provide written notice to the Division within five (5) calendar days of becoming aware of such circumstances. The written notice shall describe what, if any, impacts will occur on its ability to comply with the Colorado Water Quality Control Act or its implementing regulations or permits 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.
28. 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, Great Western Dairy 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, Great Western Dairy 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
kelly.morgan@state.co.us

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 12th day of Nov. 2010.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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