



COLORADO

Department of Public
Health & Environment

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

April 21, 2015

Andrew Hop Jay
AJR Farms, LLC
27294 WCR 47 ½
Greeley, CO 80631

Certified Mail Number: 7002 2410 0001 0130 3547

RE: Service of Notice of Violation/Cease and Desist Order, Number: CN-150421-1

Dear Mr. Hop:

Mr. Hop is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). The 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 the NOV/CDO upon findings that Mr. Hop has violated the Act and/or permit or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Mr. Hop 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 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 Christy Pickens of this office by phone at (303) 692-3581 or by electronic mail at christy.pickens@state.co.us.

Sincerely,



Christy Pickens, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Lauren light, Weld County Health Department
Michael Beck, Grants and Loans Unit, CDPHE
Christy Pickens, Compliance & Enforcement Unit, CDPHE
Tania Watson, Compliance Assurance, CDPHE
Chad DeVolin, Environmental Agriculture Program, CDPHE
Michael Sherry, Environmental Agriculture Program, CDPHE



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: CN-150421-1

IN THE MATTER OF: ANDREW JAY HOP
 AJR FARMS aka AJR I and AJR II
 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 violations cited herein, Andrew Jay Hop ("Mr. Hop") was an individual conducting business in the State of Colorado as a sole proprietorship.
2. Mr. Hop is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing control regulation, 5 CCR 1002-81, §81.3(25).
3. Mr. Hop owns and/or operates a dairy operation located at approximately 27294 Weld County Road 47 ½, about 2.5 miles west of the town of Kersey in Weld County, Colorado, (the "Facility").
4. The Facility consists of two animal feeding operations known as AJR I and AJR II. AJR I and AJR II are located adjacent to each other on the east and west side of County Road 47 ½, respectively. AJR I and AJR II are adjacent to each other and share common ownership and therefore the Facility is a single concentrated animal feeding operation ("CAFO") as defined by 5 CCR 1002-81, §81.3(6).
5. Department records establish that the Facility has the capacity to stable or confine 2,900 animals (mature dairy cows, heifers, calves, and some roping stock) and therefore is a large CAFO as defined by 5 CCR 1002-81, §81.3(16).
6. AJR I and AJR II each have their own milking barn, animal confinement areas, mortality storage area and feed storage area. The main silage and commodity area is located at AJR I. The Facility does not land apply manure or wastewater to land under its operational control. Manure and process wastewater generated at AJR I and AJR II is managed via the following impoundments:



- a. AJR I impoundments:
 - i. West Sedimentation Pond- process generated wastewater from the milking parlor is piped underground to this pond. Wastewater from the West Sedimentation Pond can overflow into the East Sedimentation Pond;
 - ii. East Sedimentation Pond- collects manure and wastewater from the northern outside animal confinement area and the West Sedimentation Pond. Wastewater from the East Sedimentation Pond can be pumped to Pond H;
 - iii. Pond D- serves as an emergency impoundment; and
 - iv. Pond H- Pond H is the terminal impoundment at AJR I. Pond H collects manure and wastewater runoff from the feed storage area, manure storage area, southern pens and calf area, as well as process wastewater from the East Sedimentation Pond.
- b. AJR II impoundments:
 - i. Pond G- process generated wastewater from the milking parlor is piped underground to this pond. Wastewater from Pond G can be pumped to Pond E as needed;
 - ii. Pond F- manure and wastewater from the outside animal confinement area drains to an unlined earthen borrow ditch alongside County Road 47 ½ and is conveyed south to Pond F. Wastewater from Pond F can overflow into Pond E; and
 - iii. Pond E- collects wastewater overflow from Pond G and Pond F.

FAILURE TO MEET GROUNDWATER PROTECTION REQUIREMENTS

7. Pursuant to 5 CCR 1002-81, §81.7(2)(a)(i), an impoundment at a concentrated animal feeding operation shall be constructed and maintained to comply with the seepage rate standard, which shall not exceed 1×10^{-6} cm/sec.
8. Pursuant to 5 CCR 1002-81, §81.7(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, §81.7(2) have been met and stating what constitutes each constructed liner.
9. Pursuant to the Department's authority under §25-8-306 C.R.S., on October 29, 2013, the Department's Environmental Agriculture Program ("Department EAP") staff conducted an inspection of the Facility to determine Mr. Hop's compliance with the Water Quality Control Act and the Animal Feeding Operations Control Regulation, 5 CCR 1002-81. During the inspection, Department EAP staff observed that manure and wastewater had been pumped from Pond H to a low-lying area east of Pond H and the area was being utilized as a shallow evaporation basin (the "unnamed evaporation basin").
10. Department records establish that manure and process wastewater was impounded in the unnamed evaporation basin east of Pond H until February 5, 2015, when Mr. Hop submitted information documenting that the shallow evaporation basin was dry, clear of solids, and re-graded.
11. The unnamed evaporation basin was an "impoundment" as defined by 5 CCR 1002-81 §81.3(14).
12. Department records establish that Mr. Hop did not have documentation certifying that the impoundment liner provisions of 5 CCR 1002-81 §81.7(2) have been met for the unnamed evaporation basin.

13. Mr. Hop's failure to construct and maintain the unnamed evaporation basin east of Pond H to comply with the seepage rate standard constitutes a violation of 5 CCR 1002-81, §81.7(2)(a)(i).
14. Mr. Hop's failure to have available documentation prepared by a professional engineer registered in Colorado certifying that the impoundment provisions of 5 CCR 1002-81, §81.7(2) have been met for the unnamed evaporation basin east of Pond H constitutes violation of 5 CCR 1002-81, §81.7(2)(b).

NOTICE OF VIOLATION

15. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Mr. Hop has violated the following sections of the Colorado Water Quality Control Act and its implementing control regulations.

5 CCR 1002-81, §81.7(2)(a)(i) , which states in part, "The seepage rate from an impoundment shall not exceed 1×10^{-6} cm/sec..."

5 CCR 1002-81, §81.7(2)(b), which states in part, "CAFO operators shall have available documentation, including the supporting information required by section 81.7(2)(b)(i), prepared by a professional engineer registered in Colorado certifying that the provisions of section 81.7(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., Mr. Hop is hereby ordered to comply with the following specific terms and conditions of this Order:

16. Within forty five (45) calendar days of the receipt of this Order, Mr. Hop shall develop and submit to the Division a comprehensive waste management strategy that addresses, at a minimum, the following elements: the adequacy of the manure and wastewater storage capacity of the Facility; the adequacy of the Facility Management Plan; proper manure and wastewater handling and storage strategies; methods to ensure proper operation and maintenance of impoundments; considerations of additional third party transfer and/or other wastewater disposal options; conservation practices; and staff training.
17. Within sixty (60) calendar days of receipt of this Order, Mr. Hop shall review the requirements of the Facility Management Plan and comprehensive waste management strategy with his staff and submit written certification to the Division stating that he has completed the review of the strategy the with his staff.
18. All documents submitted under this Order shall be under the signature of Mr. Hop and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required.
19. If Mr. Hop becomes aware of any situation or circumstances that cause Mr. Hop to become unable to comply with any condition or time schedules set forth by this Order, Mr. Hop shall provide written notice to the Division within five (5) calendar days of Mr. Hop becoming aware of such

circumstances. Mr. Hop's notice shall describe what, if any, impacts will occur on Mr. Hop's ability to comply with the Colorado Water Quality Control Act 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.

20. 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, Mr. Hop 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, Mr. Hop shall submit an original and an electronic copy to the Division at the following address:

Christy Pickens
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-3584
Email: christy.pickens@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 803, 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 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 21ST day of April, 2015.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Patrick J. Pfaltzgraff, Director
WATER QUALITY CONTROL DIVISION

