COLORADO
Department of Public Health & Environment

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

January 14, 2015

Jonathan H. Steeler, Esq. *(via USPS mail and email)*
Ryley Carlock & Applewhite
1700 Lincoln Street, Suite 3500
Denver, CO 80203

Certified Mail Number: 7011 2000 0001 3463 7522

RE: Compliance Order on Consent, Number: IC-150114-1

Dear Mr. Steeler:

Enclosed for your records, you will find Brushco Farms, Inc.'s 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 23). Following 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 Compliance Order on Consent was changed 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
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Tony Cappello, Northeast Colorado Health Department (tonyc@nchd.org)
Nicole Rowan, Watershed Section, CDPHE
Bret Icenogle, Engineering Section, CDPHE
Greg Naugle, Field Services Section, CDPHE
Erin Scott, Permits Section, CDPHE

Andrew Ross, Senior Hydrogeologist, CDPHE
Tania Watson, Compliance & Enforcement Unit, CDPHE
Steve Attridge, Mastronardi Produce (SteveA@sunsetgrown.com)
David Einstandig, Esq., Thav Gross, P.C. (deinstandig@thavgross.com)
Jonathan H.Steeler, Esq., Ryley Carlock & Applewhite (jsteeler@rcalaw.com)
Sheela S. Stack, Esq., Ryley Carlock & Applewhite (sstack@rcalaw.com)

COLORADO
Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: IC-150114-1**

IN THE MATTER OF: **BRUSHCO FARMS, INC.**
CDPS PERMIT NO. CO0048862
MORGAN 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, 25-8-605, and 25-8-606 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 Brushco Farms, Inc. ("Brushco Farms"). The Division and Brushco Farms 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:

   a. To resolve, without litigation, the civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order/ Clean Up Order, Number: IO-110627-2 (the "NOV/CDO/CUO"), that the Division issued to Brushco Farms on June 27, 2011; and
   b. To establish groundwater monitoring requirements to demonstrate that, with respect to nitrate, groundwater conditions are acceptable to protect current and future beneficial uses.

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 Brushco Farms, the Facility, and Brushco Farms' compliance with the Act and its implementing permit regulations.

3. At all times relevant to the violations cited herein, Brushco Farms was a Colorado Corporation and registered to conduct business in the State of Colorado.

4. Brushco Farms is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. Brushco Farms owns and/or operates an indoor hydroponic tomato growing operation, located at or near 1450 South Clayton Street, near the City of Brush, Morgan County, Colorado (the "Facility").

6. The tomato growing operations at the Facility take place in a greenhouse that contains approximately nineteen (19) acres of tomato growing space as well as an irrigation room, packing warehouse, and a small office. To support the tomato growing operation, well water is extracted from the Brunghardt well located approximately 1.25 miles south of the Facility and pumped to a storage tank located outside of the greenhouse. Prior to November 2011, Brushco Farms treated the well water via filtration and aeration to remove manganese, followed by pH correction and the addition of nutrients, including, among others, potassium, nitrate, iron, sulfur, and phosphorus. The amended water was drip irrigated in excess into the root zones of the tomato plants to keep the root zone saturated and to provide adequate nutrients to the tomato plants throughout the day. The excess water (leachate) was drained and collected in three sumps within the greenhouse. Each of the three sumps were operated by a float switch which discharged collected water through poly vinyl chloride (PVC) pipes to an unlined earthen ditch located along the southern side of the greenhouse (the "greenhouse ditch"). The greenhouse ditch flowed from the west to the east and conveyed wastewater to an unlined impoundment located in the southeastern corner of the property (the "unlined impoundment"). Wastewater from this unlined impoundment infiltrated into the ground and/or overflowed into a second, unlined drainage ditch (the "conveyance ditch") that flowed in an easterly direction to another drainage ditch ("local ditch") which flowed to the north and east for approximately 3,000 feet, where it discharged into Beaver Creek.

7. The following groundwater monitoring data collected from wells located to the north of the unlined impoundment (well identification numbers LSP-M-004 and BF-MW-04) establish groundwater nitrate concentrations that exceed the domestic water supply-human health based groundwater standard of 10 mg/l:

GROUNDWATER QUALITY DATA			
WELL IDENTIFICATION NUMBER	DATE OF SAMPLE	NITRATE, as N CONCENTRATION (MG/L)	SAMPLE DATA PROVIDED BY
LSP-M-004	7/23/2008	260.24	CO Dept. of Agriculture
LSP-M-004	5/24/2010	82.38	CO Dept. of Agriculture
LSP-M-004	6/15/2010	95.1	CO Dept. of Agriculture
LSP-M-004	7/11/2010	73.98	CO Dept. of Agriculture
LSP-M-004	8/5/2010	128.87	CO Dept. of Agriculture
LSP-M-004	9/20/2010	119.89	CO Dept. of Agriculture
LSP-M-004	10/28/2010	98.8	CO Dept. of Agriculture
LSP-M-004	11/10/2010	103.5	CO Dept. of Agriculture
LSP-M-004	10/14/2011	57.2	CO Dept. of Agriculture
LSP-M-004	2/17/2012	41.6	Brushco Farms
LSP-M-004	6/7/2012	83.8	Brushco Farms
LSP-M-004	6/7/2012	84.5(DUP)	Brushco Farms
LSP-M-004	6/19/2013	140	Brushco Farms
LSP-M-004	10/16/2013	66	Division
LSP-M-004	10/16/2013	53.1	Brushco Farms
BF-MW-04	3/3/2014	25.9	Brushco Farms
BF-MW-04	10/21/2014	29.02	Brushco Farms
BF-MW-04	12/3/2014	26.96	Brushco Farms

8. Subsequent to the issuance of the NOV/CDO/COU, Brushco Farms made improvements to the Facility and Brushco Farms' water and wastewater management practices, including ceasing the discharge from the Facility to the greenhouse ditch and to the unlined impoundment. Brushco Farms pumped the existing wastewater from the unlined impoundment and, pursuant to an agreement with the City of Brush ("City"), directed the wastewater to the City's sewer system in November 2011. By November 30, 2011 the greenhouse ditch and unlined impoundment were dry. Brushco Farms also applied for and was issued the Colorado Discharge Permit System ("CDPS") permit number CO0048862, effective March 1, 2012, that authorizes Brushco Farms to discharge wastewater from the Facility through a combination of piping and an unlined earthen conveyance to Beaver Creek, annually from April 1 through October 31. From November 1 through March 31, Brushco Farms directs wastewater from the Facility directly to the City's domestic wastewater treatment facility via the City's sewer system.

9. The poly vinyl (PVC) pipes that discharged water collected from the sumps, the on-site unlined earthen ditches, and the on-site unlined impoundment near the southeastern corner of the property are each a "point source" as defined by §25-8-103(14), C.R.S.

10. Groundwater near or beneath the earthen ditch located on the southern side of the greenhouse, groundwater near or beneath the unlined impoundment at the southeastern corner of the property, groundwater near or beneath the earthen ditch that conveyed the discharge water to Beaver Creek, and Beaver Creek are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (102).

11. Wastewater from the Facility that discharged into groundwater and Beaver Creek prior to November 30, 2011 contained, among other things, dissolved solids, suspended solids, chemical oxygen demand, ammonia as N, phosphorus, silicon, fecal coliform, arsenic, boron, copper, iron, magnesium, manganese, zinc, chloride, nitrate, nitrite, sulfate, and exhibits an acidic pH value.

12. Dissolved solids, suspended solids, chemical oxygen demand, ammonia as N, phosphorus, silicon, fecal coliform, arsenic, boron, copper, iron, magnesium, manganese, zinc, chloride, nitrate, nitrite, sulfate, and exhibited acidic pH value are "pollutants," or indicators thereof, as defined by §25-8-103(15), C.R.S.

13. Division records establish that Brushco Farms did not have any permits authorizing the discharge of pollutants from the poly vinyl (PVC) pipes, the on-site unlined earthen ditches, and the on-site unlined pond near the southeastern corner of the property into groundwater or to Beaver Creek.

14. Brushco Farms' discharge of dissolved solids, suspended solids, chemical oxygen demand, ammonia as N, phosphorus, silicon, fecal coliform, arsenic, boron, copper, iron, magnesium, manganese, zinc, chloride, nitrate, nitrite, sulfate, and an exhibited acidic pH into groundwater and to Beaver Creek between August 17, 2007 and November 30, 2011 constitutes an unauthorized discharge of pollutants from point sources into state waters in violation of §25-8-501(1), C.R.S.

15. The Division acknowledges that Brushco Farms timely and satisfactorily performed all of the obligations and actions required under the June 27, 2011 NOV/CDO/CUO.

ORDER AND AGREEMENT

16. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602, 25-8-605 and 25-8-606, C.R.S., and in satisfaction of the alleged violations cited herein and

in the NOV/CDO/CUO, the Division orders Brushco Farms to comply with all provisions of this Consent Order, including all requirements set forth below.

17. The Parties agree to the terms and conditions of this Consent Order. The Parties agree that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602, 25-8-605 and 25-8-606, C.R.S., and is an enforceable requirement of the Act. The Parties also agree not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division against Brushco Farms or by Brushco Farms 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.

18. Notwithstanding the above or anything else contained in this Consent Order, Brushco Farms does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Brushco Farms pursuant to this Consent Order shall not constitute evidence of fault and liability by Brushco Farms. Brushco Farms expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

COMPLIANCE REQUIREMENTS

19. Effective January 1, 2015, Brushco Farms shall conduct quarterly groundwater quality monitoring in monitoring well BF-MW-04 for nitrate. Sample collection and laboratory analysis shall be conducted in accordance with the methods specified in 40 C.F.R. Part 136. In terms of the duration of monitoring, Brushco shall only be required to conduct monitoring for four quarters (the entire calendar year of 2015) provided that the data establishes a stable or decreasing trend in the nitrate concentration of the groundwater. The parties agree that the nitrate level of 25.9 mg/l (the nitrate concentration measured in well BF-MW-04 on March 3, 2014) shall be used as the baseline upon which to determine whether the nitrate levels are stable or decreasing. The Division may require additional monitoring beyond calendar year 2015 if the nitrate levels do not appear to be stable or decreasing. Brushco Farms shall submit the results of the quarterly monitoring electronically to the Division within thirty (30) calendar days of receipt of the results.

20. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required.

CIVIL PENALTY

21. Based upon the factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, Brushco Farms shall pay One Hundred Eighty Thousand Dollars ($180,000.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the One Hundred Eighty Thousand Dollar ($180,000.00) civil penalty for the above violation(s) and Brushco Farms agrees to make the payment within thirty (30) calendar days of the issuance of an Order for Civil Penalty 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-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

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

23. This Consent Order is subject to the Division's "Public Notification on Administrative Enforcement Actions Policy," which includes a thirty day public comment period. The Division and Brushco Farms 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.

24. 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 Brushco Farms, 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.

25. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder.

26. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.

27. Notwithstanding paragraph 18 above, the violations described in this Consent Order will constitute part of Brushco Farms' compliance history for purposes where such history is relevant under Colorado law.

28. Brushco Farms shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

29. 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/CUO. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief for Brushco Farms' failure to comply.

30. This Consent Order does not grant any release of liability for any violations not specifically cited herein or in the NOV/CDO/CUO.

31. Brushco Farms reserves its rights and defenses regarding the Facility in proceedings other than proceedings to enforce this Consent Order.

32. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.

33. Brushco Farms 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 or for any injuries or damages to persons or property resulting from acts or omissions of Brushco Farms, or those acting for or on behalf of Brushco Farms, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Brushco Farms shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Brushco Farms in carrying out activities pursuant to this Consent Order. 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.

SITE ACCESS AND SAMPLING

34. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining Brushco Farms' compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, manifests, shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview Brushco Farms personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.

35. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Brushco Farms. Brushco Farms shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.

36. Brushco Farms shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. Brushco Farms shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

FORCE MAJEURE

37. Brushco Farms shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Brushco Farms, and which cannot be overcome by due diligence.

38. Within seventy-two (72) hours of the time that Brushco Farms knows or has reason to know of the occurrence of any event which Brushco Farms has reason to believe may prevent Brushco Farms from timely compliance with any requirement under this Consent Order, Brushco Farms shall provide verbal notification to the Division. Within seven (7) calendar days of the time that Brushco Farms knows or has reason to know of the occurrence of such event, Brushco Farms shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

39. The burden of proving that any delay was caused by a force majeure shall at all times rest with Brushco Farms. If the Division agrees that a force majeure has occurred, the Division will so notify Brushco Farms. The Division will also approve or disapprove of Brushco Farms' proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Brushco Farms' proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Brushco Farms. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, Brushco Farms may file an objection.

40. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Brushco Farms shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

41. If the Division determines that that a violation of this Consent Order has occurred; that additional groundwater quality monitoring in well BF-MW-04 is necessary; that a force majeure has not occurred; that the actions taken by Brushco Farms to mitigate the delay caused by a force majeure are inadequate or that Brushco Farms' Notice of Completion should be rejected pursuant to paragraph 48 the Division shall provide a written explanation of its determination to Brushco Farms. Within thirty (30) calendar days of receipt of the Division's determination, Brushco Farms shall:

    a. Submit a notice of acceptance of the determination; or
    b. Submit a notice of dispute of the determination.

    If Brushco Farms fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

42. If the Division disapproves or approves with modifications any original or revised plan submitted by Brushco Farms pursuant to this Consent Order, the Division shall provide a written explanation

of the disapproval or approval with modifications. Within thirty (30) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, Brushco Farms shall:

a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
b. In the case of a disapproval only, submit a revised plan for Division review and approval. Brushco Farms may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by Brushco Farms; or
c. Submit a notice of dispute of the disapproval or approval with modifications (Notice of Dispute").

If Brushco Farms fails to do any of the above within the specified time, Brushco Farms shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

43. If Brushco Farms submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify Brushco Farms in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by Brushco Farms. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S. (the "APA"), unless Brushco Farms submits a notice of dispute, pursuant to paragraph 42 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.

44. If Brushco Farms files any Notice of Dispute pursuant to paragraphs 41, 42, or 43 the notice shall specify the particular matters in the Division's determination that Brushco Farms seeks to dispute, and the basis for the dispute. Matters not identified in the Notice of Dispute shall be deemed accepted by Brushco Farms. The Division and Brushco Farms shall have thirty (30) calendar days from the receipt by the Division of the Notice of Dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the APA.

NOTICES

45. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Kelly Morgan
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: 303-692-3634
E-mail: kelly.morgan@state.co.us

For Brushco Farms:

Steve Attridge
Chief Financial Officer
Mastronardi Produce
2100 Road 4 E
Kingsville, ON N9Y 2E5
Telephone: 519-326-3218
E-mail: SteveA@sunsetgrown.com

With copies to:

David Einstandig, Esq.
Thav Gross, P.C.
30150 Telegraph Road, Ste. 444
Bingham Farms, Michigan 48025
Telephone: 248-645-1700
E-mail: deinstandig@thavgross.com

Jonathan H. Steeler, Esq.
Ryley Carlock & Applewhite
1700 Lincoln Street, Suite 3500
Denver, CO 80203
Telephone: (303) 813-6703
E-mail: jsteeler@rcalaw.com

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

46. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Brushco Farms of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Brushco Farms agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Brushco Farms and the Facility to achieve and maintain compliance with State law.

MODIFICATIONS

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

COMPLETION OF REQUIRED ACTIONS

48. Brushco Farms shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Brushco Farms' Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects

Brushco Farms' Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Brushco Farms shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:

a. Submit a notice of acceptance of the determination; or
b. Submit a Notice of Dispute.

If Brushco Farms fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

NOTICE OF EFFECTIVE DATE

49. 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 23. 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

50. This Consent Order is binding upon Brushco Farms 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 Consent Order. Brushco Farms agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of 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 BRUSHCO FARMS, INC.:

_____ Date: January 8, 2015
Kevin Safrance, Chief Operating Officer

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: 14 Jan 15
Patrick J. Pfaltzgraff, Director
WATER QUALITY CONTROL DIVISION