

STATE OF COLORADO

John W. Hickenlooper, Governor
Karin McGowan
Interim Executive Director

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

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



Colorado Department
of Public Health
and Environment

July 25, 2013

Casey DeHaan
Great Western Dairy, LLC
39390 Weld County Road 39
Ault, Colorado 80601

RE: Compliance Order on Consent, Number: CC-130724-1

Dear Mr. DeHaan:

Enclosed for Great Western Dairy, LLC's records, you will find Great Western Dairy'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 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 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
Clean Water Compliance & Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Troy Swain, Weld County Department of Public Health & Environment
Tania Watson, Compliance & Enforcement Unit, CDPHE
Chad DeVolin, Environmental Agriculture Program, CDPHE



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

COMPLIANCE ORDER ON CONSENT

NUMBER: CC-130724-1

**IN THE MATTER OF: GREAT WESTERN DAIRY, LLC
 CDPS PERMIT NO. COA-931000
 CERTIFICATION NO. COA-931084
 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 Great Western Dairy, LLC (“Great Western Dairy”). The Division and Great Western Dairy 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, Number: CO-101112-2 (the “NOV/CDO”), that the Division issued to Great Western on November 12, 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 Great Western Dairy, the Facility and Great Western Dairy’s compliance with the Act and its permit.
3. At all times relevant to the alleged violations identified herein, Great Western Dairy was a limited liability company in good standing and registered to conduct business in the State of Colorado.
4. 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).
5. 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).

6. 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; a Compost Pond; and five land application sites that surround the production area.
7. 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.
8. 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.
9. The Facility is the subject of certification number COA-931084 (the "Certification") under the 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

10. 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.
11. 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.
12. 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.
13. 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.
14. 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.

15. 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.
16. 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").
17. 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.
18. 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.
19. 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.
20. Great Western Dairy's Impoundment level records establish that the two (2) feet of freeboard was exceeded in the North Pond on or about May 10, 2010 and was not re-established in the North Pond until July 5, 2010. The two (2) feet of freeboard was exceeded in the South Pond sometime between May 10, 2010 and May, 15, 2010 and was not re-established in the South Pond until May 31, 2010.
21. 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.

22. 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.
23. 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.
24. 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.
25. The Division acknowledges that Great Western Dairy timely and satisfactorily performed all of the obligations and actions required under the November 12, 2010 NOV/CDO.

ORDER AND AGREEMENT

26. 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 Great Western Dairy to comply with all provisions of this Consent Order, including all requirements set forth below.
27. Great Western Dairy agrees to the terms and conditions of this Consent Order. Great Western Dairy 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. Great Western Dairy also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Great Western Dairy 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.
28. Notwithstanding the above, Great Western Dairy does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Great Western Dairy pursuant to this Consent Order shall not constitute evidence of fault and liability by Great Western Dairy with respect to the conditions of the Facility.

CIVIL PENALTY

29. Based upon the application of the Division's Animal Feeding Operations Civil Penalty Policy (September 2012), and consistent with Departmental policies for violations of the Act, Great Western Dairy shall pay Fifty Nine Thousand Thirty Five Dollars (\$59,035.00) in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the Fifty Nine Thousand Thirty Five Dollar (\$59,035.00) civil penalty for the above violations and Great Western Dairy agrees to make the payment through twelve installment payments as described in the table below:

Payment	Amount	Due Date
1	\$4,919.58	Within thirty (30) calendar days of issuance of a Penalty Order by the Executive Director or her designee
2	\$4,919.58	October 1, 2013
3	\$4,919.58	November 1, 2013
4	\$4,919.58	December 1, 2013
5	\$4,919.58	January 1, 2014
6	\$4,919.58	February 1, 2014
7	\$4,919.58	March 1, 2014
8	\$4,919.58	April 1, 2014
9	\$4,919.58	May 1, 2014
10	\$4,919.58	June 1, 2014
11	\$4,919.58	July 1, 2014
12	\$4,919.62	August 1, 2014

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

30. Failure to submit full payment of any installment by the due date described in paragraph 29 above shall be deemed a violation of this Consent Order.
31. In the event that Great Western Dairy fails to comply with any of the terms or provisions of this Consent Order relating to payment of the civil penalty, Great Western Dairy 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 29 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 Great Western Dairy 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 her designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Great Western Dairy, 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 28 above, the violations described in this Consent Order will constitute part of Great Western Dairy'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 Great Western Dairy. Great Western Dairy 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, and/or injunctive relief.
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, Great Western Dairy 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-CWE-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 Great Western Dairy:

Casey DeHaan
Great Western Dairy, LLC
39390 Weld County Road 39
Ault, CO 80601
Telephone: 970.534.1475
E-mail: gw dairy@gmail.com

MODIFICATIONS

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

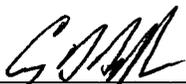
NOTICE OF EFFECTIVE DATE

43. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or her 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 Great Western Dairy 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. 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 GREAT WESTERN DAIRY, LLC:


_____ Date: 7/18/13
Casey DeHaan, Managing Member

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:


_____ Date: 7/24/13
Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION