

UTAH DIVISION OF WATER QUALITY

CLINT WADE
WADELAND DAIRY
6061 West 900 South
OGDEN, UTAH 84404

DOCKET NUMBER I15-06
SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **WADELAND DAIRY** (hereinafter "**OPERATOR**") and the **DIRECTOR OF THE UTAH DIVISION OF WATER QUALITY** (hereinafter the "**DIRECTOR**"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The **DIRECTOR** has authority to administer the *Utah Water Quality Act, as amended 1953*, as specified in *UCA 19-5-106(2)(d)* (hereinafter the "**ACT**").
2. The **DIRECTOR** has been delegated authority by the U.S. Environmental Protection Agency (EPA) to administer the *National Pollutant Discharge Elimination System (NPDES)* permit program under the *Federal Clean Water Act (CWA)*.
3. The parties now desire to resolve this matter fully without further administrative proceedings except to the extent provided herein by entering into this **AGREEMENT**. Entering into this **AGREEMENT** is not an admission of liability or factual allegation set out in the **NOTICE**, nor is it an admission of or an agreement to any disputed facts or disputed legal theories, nor is it an admission of any violation of any law, rule, regulation or permit by the **OPERATOR**.
4. The **DIRECTOR** will administer the terms and provisions of this **AGREEMENT**.
5. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number I15-06 (hereinafter the "**NOTICE**"), between the **OPERATOR** and the **DIRECTOR**, issued to the **OPERATOR** on January 20, 2016, by the **DIRECTOR**. It does not in any way relieve the **OPERATOR** from any other obligation imposed under the *ACT* or any other State or Federal laws.
6. In resolution of said **NOTICE** referenced in Paragraph 5 of this **AGREEMENT**:
 - a. The **DIRECTOR** agrees to hold in abeyance the penalty in the amount of \$10,064 which was calculated in conformance with the penalty policy outlined in *UAC 317-1-8*. The penalty will be held in abeyance until **September 1, 2018**, at which point it will be waived dependent on the timely compliance of the **OPERATOR** with the requirements outlined in Paragraphs 6.b through 6.h of this **AGREEMENT**.
 - b. The **OPERATOR**, to the extent possible, agrees to immediately implement the dairy's Nutrient Management Plan (NMP) as approved by the **DIRECTOR**. The Division of Water Quality will public notice the current NMP approved for permitting and settlement agreement purposes, on or about **February 15, 2018**.
 - c. The **OPERATOR** agrees to prepare a final NMP that will include the design

and construction requirements of any new wastewater or evaporation pond(s), and other controls as needed and implemented. The NMP must demonstrate facility compliance NRCS practices and standards. The Final NMP must be submitted to the **DIRECTOR** for approval and must be fully implemented by **September 1, 2018**. NMP implementation is not limited to, but includes construction and operation of any new storage structures at the dairy. The **OPERATOR** also agrees to update the NMP on an ongoing basis as needed to reflect actual and planned practices and waste management facilities at the dairy. The NMP and all updates to the NMP, must demonstrate facility compliance with Natural Resources Conservation Service (NRCS) practices and standards. Any NMP updates must be submitted to the **DIRECTOR** for approval.

- d. The **OPERATOR** agrees to fully implement the final **DIRECTOR** approved NMP, as referenced in 6.c, prior to **September 1, 2018**. Prior to **July 1, 2018**, the **OPERATOR** may request an extension of the **September 1, 2018** NMP deadline for delays in implementation beyond the control of the **OPERATOR**. Any NMP deadline extension approval will be at the discretion of the **DIRECTOR** and granted only for good cause. At any time prior to, or soon after the **September 1, 2018** NMP implementation deadline, the **DIRECTOR** may determine that the **OPERATOR** is out of compliance with this **AGREEMENT**. If the **OPERATOR** is determined to be out of compliance due to lack of progress, failing to meet the **September 1, 2018** NMP deadline, or failing to complete any new construction of facilities, the **DIRECTOR** may require that the penalty be remitted. For significant lack of progress, the **DIRECTOR** may require penalty payment prior to the **September 1, 2018** deadline at which time an invoice will be sent to the **OPERATOR** with a penalty payment due date.
- e. Upon issuance, the **OPERATOR** agrees to fully implement the CAFO permit. The **OPERATOR** acknowledges that any discharge of pollutants to waters of the State is an illegal discharge unless allowed under the CAFO permit.
- f. The **OPERATOR** agrees to immediately cease all discharges to waters of the State. The **OPERATOR** agrees that the dairy and cropland in operational control of the dairy will not have discharges that contaminate waters of the State with manure, wastewater, runoff, feed, or other pollutants.
- g. The **OPERATOR** agrees to notify Don Hall with the Division of Water Quality at 801-536-4492, within 24-hours of any discharge of pollutants to waters of the State.
- h. The **OPERATOR** agrees to pay a stipulated penalty in the amount of \$200 per day for every day of non-payment or partial payment of the penalty as specified in 6.a.

8. Nothing contained in this **AGREEMENT** shall preclude the **DIRECTOR** from taking additional actions or issuing additional penalties against the **OPERATOR** for violations not resolved by this **AGREEMENT**.
9. If an agreement between the **OPERATOR** and the **DIRECTOR** cannot be reached in a dispute arising under any provision of this **AGREEMENT**, then the **OPERATOR** or the **DIRECTOR** may commence a proceeding with the Board under the *Administrative Procedures Act* to resolve the dispute. A final decision in any adjudicative proceeding shall be subject to judicial review under applicable state law.
10. Nothing in this **AGREEMENT** shall constitute a waiver by the **OPERATOR** to raise in defense any legal or factual contention for future allegations of noncompliance.
11. Nothing in this **AGREEMENT** shall constitute or be considered as a release from any claims, to include natural resource damage claims, cause of action, or demand in law or equity which the **STATE** may have against the **OPERATOR**, or any other person, firm, partnership or corporation for any liability arising out of or relating in any way to the release of pollutants to waters of the State.

AGREED to this ____ day of _____, 2018.

WADELAND DAIRY

**UTAH DIVISION OF WATER
QUALITY**

By: Chit Wade
Authorized Agent

By: _____
Director