

Paul M. McConkie (#5881)
Assistant Attorney General
Mark L. Shurtleff (#4666)
Utah Attorney General
160 East 300 South, Fifth Floor
Salt Lake City, UT 84111
(801)366-0236
Counsel for the Executive Secretary
of the Utah Water Quality Board

BEFORE THE UTAH WATER QUALITY BOARD

In the Matter of Cardon Dairy
Notice of Violation and Order

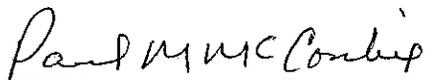
Docket No. 109-07

**NOTICE OF ENTRY OF
STIPULATED FINDINGS OF FACT
AND ORDER**

NOTICE IS HEREBY GIVEN that on June 15, 2010, the parties agreed to the terms of the attached Stipulated Findings of Fact and Order. The Stipulated Findings of Fact and Order was signed by Paul Cardon on June 15, 2010. Following thirty days notice for public comment, the Stipulated Findings of Fact and Order was signed by the Executive Secretary of the Utah Water Quality Board on August 10, 2010, thereby resolving the Notice of Violation and Order dated May 18, 2009, which is the subject of this formal administrative proceeding.

DATED this 14th day of September, 2010.

MARK L. SHURTLEFF
ATTORNEY GENERAL



Paul M. McConkie
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2010, the undersigned caused that the original and/or a copy, as well as an electronic copy of the foregoing NOTICE OF ENTRY OF STIPULATED FINDINGS OF FACT AND ORDER and attached signed STIPULATED FINDINGS OF FACT AND ORDER be sent to the the following as indicated:

Connie Nakahara (original and copy hand delivered and electronic copy)

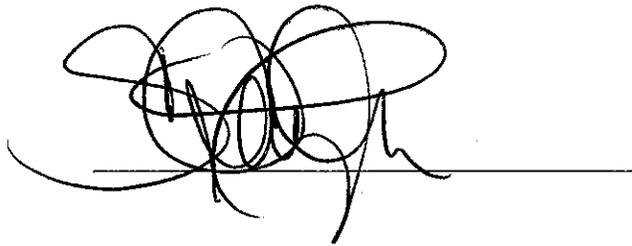
Administrative Law Judge
Utah Attorney General's Office
Environment Division
160 East 300 South, Fifth Floor
PO Box 140873
Salt Lake City, UT 84114-0873
cnakahara@utah.gov

Paul Cardon (via U.S. mail, postage prepaid, and electronic copy)

Cardon Dairy
4407 West 4700 North
Benson, UT 84335
yellow8dog@hotmail.com

Walter L. Baker (via interagency mail and electronic copy)

Executive Secretary
Water Quality Board
195 North 1950 West
Salt Lake City, UT 84114-4810
wbaker@utah.gov

A handwritten signature in black ink, appearing to be "Walter L. Baker", is written over a horizontal line. The signature is somewhat stylized and scribbled.

PAUL M McCONKIE (U.S.B. No. 5881)
Assistant Attorney General
MARK L SHURTLEFF (U.S.B. No. 4666)
Attorney General
160 East 300 South, Fifth Floor
P.O. Box 140873
Salt Lake City, UT 84114-0873
Telephone: (801)366-0236
Counsel for the Executive Secretary
Utah Water Quality Board

BEFORE THE UTAH WATER QUALITY BOARD

In the Matter of Cardon Dairy
Notice of Violation and Order

**STIPULATED FINDINGS OF FACT
AND ORDER**

Docket No. 109-07

On May 18, 2009, a Notice of Violation and Order ("NOV/O") was issued by the Executive Secretary of the Utah Water Quality Board ("Executive Secretary") in the above- referenced matter. In connection therewith, this Stipulated Findings of Fact and Order is made and consented to, by, and among the Executive Secretary of the Utah Water Quality Board ("Executive Secretary") on the one hand, and Paul Cardon, owner of Cardon Dairy ("Operator"), on the other hand, as follows:

A. FINDINGS OF FACT

1. Cardon Dairy (Facility) is a dairy owned and operated by Paul Cardon. The Facility is located at 4409 West 4700 North, Benson, Utah 84335. The Facility includes animal pens, milk barn, manure bunker and pit, and other structures. The Facility included approximately 100 cows at the time of inspection.

2. The Facility lies adjacent to and on the bank of Horseshoe Bend on Cutler Reservoir. Horseshoe Bend on Cutler Reservoir is a water of the State.

3. On March 24, 2009, several Division of Water Quality ("DWQ") representatives, including Don Hall, visited the Facility in response to a referral from the Utah AFO Committee. Nathan Daugs from the Utah Association of Conservation Districts accompanied Don Hall on the visit.

4. On March 24, 2009:

a. Wastewater from the milking barn was flowing from the Facility to the reservoir.

b. Calf hutches were located on the bank of the reservoir.

c. Water was observed seeping underneath the retaining wall adjacent to the pens, reportedly from a gopher hole.

d. Wastewater from the manure pit and/or bunker could potentially overflow and discharge to the reservoir if not managed to avoid it.

e. There was a calf carcass on the bank next to the calf pens that had not been removed to the compost area.

5. The Facility does not have a Utah Pollutant Discharge Elimination System ("UPDES") Permit or other permit issued by the DWQ to provide approval for discharging manure or manure runoff to waters of the State.

6. Cutler Reservoir is a "water() of the State" as defined in Utah Code Ann. § 19-5-102(18)(a).

7. Arne Hultquist and Emily Bartusek from DWQ collected a sample of barnwater discharging to the reservoir during the March 24, 2009 visit. Samples were analyzed by the Utah State Laboratory according to approved procedures. The sample included Chain of Custody submitted to the laboratory within the six hour holding time for E. coli. The Numeric Water Quality Standards water use classes for Cutler Reservoir are: Recreation and Aesthetics (2B); Aquatic Wildlife (3B and 3D); and Agriculture (4). The water quality standards shown in Table 1 below the lowest concentration of the respective parameter standards for the four water use classes. Sample results in bold indicate a violation of a Numeric Water Quality Standard or pollution indicator.

Table 1: Milking Barnwater Effluent Sampling Results

Parameter	Results	Water Quality (Classes 2B, 3B, 3D, 4)
Ammonia N	1.13 mg/l	N/A
NO ₂ +NO ₃	1.13 mg/l	N/A
Total Phosphorous	6.25 mg/l	0.05 mg/l (Pollution indicator, 2B)
Total Coliform	>4839.2 c/100 ml	N/A
E. coli	>4839.2 c/100 ml	666 c/100 ml (standard, 2B)
BOD-5	1011 mg/l	5 mg/l (pollution indicator, 2B)
Total Dissolved Solids	438 mg/l	1200 mg/l (4)
Total Suspended Solids	396.0 mg/l	N/A

The sampling results indicate manure contaminated water. The E. coli standard for Class 2B water was exceeded in the discharge to Cutler Reservoir.

8. The Facility has been identified as a Potential Concentrated Animal Feeding Operation ("PCAFO") by the Utah AFO Committee which referred the facility to DWQ for regulatory enforcement.

B. VIOLATIONS

Based on the foregoing Findings of Fact, the Facility has violated the following:

1. On March 24, 2009, the Facility discharged milking barn wastewater into waters of the State in violation of Utah Code Ann. § 19-5-107(1)(a).
2. On March 24, 2009, the Facility discharged milking barn wastewater into waters of the State without a valid permit in violation of Utah Code Ann. § 19-5-107(3)(a).
3. On March 24, 2009, the Facility discharged milking barnwater into waters of the State, in violation of the Narrative Water Quality Standards found in Utah Admin. Code

R. 317-2-7.2.

4. On March 24, 2009, the Facility discharged milking barnwater into waters of the State, in violation of Numeric Water Quality Standards (E. coli standard for Class 2B water) found in Utah Admin. Code R. 317-2-7.1.
5. Prior to and as observed on March 24, 2009, the Facility placed calf hutches near a water of the State, in violation of Utah Code Ann. § 19-5-107(1)(a).

C. ORDER

Based upon the foregoing Findings of Fact and Violations, and pursuant to Utah Code Ann. §§ 19-5-107 and -111, the Parties hereby stipulate to the entry of the following Order:

IT IS HEREBY ORDERED:

1. Operator is to immediately initiate all actions necessary to achieve compliance with all applicable provisions of the Utah Water Quality Act, the Water Quality rules in the Utah Administrative Code and this Order. This includes complying with the Notice of Violation and Order issued by the Executive Secretary on July 30, 2009 attached hereto and incorporated herein by reference. However, the compliance schedule will be updated to be consistent with the compliance schedule in this Order. (Attachment A)
2. Operator shall not discharge pen runoff, site runoff, parlor water, barn water, manure bunker and manure pit overflow or runoff, mortality runoff, manure, or other pollutants to Cutler Reservoir or other waters of the State unless allowed under terms of a Utah Pollutant Discharge Elimination System (UPDES) permit.
3. Operator shall properly manage waste storage structures at levels such that the dairy will not discharge manure, runoff, milk barn (including milk parlor) wastewater, and other wastes to waters of the State. Also, to properly contain, dispose, or land apply manure, liquid manure, or other wastes removed from the manure bunkers and manure pit.
4. Operator is to develop or update a waste management plan (WMP), and submitted WMP to the Executive Secretary by August 15 2010. The plan is to be implemented within 10 days of Executive Secretary approval.
 - a. The waste management plan must describe how solid and liquid manure and mortalities will be managed to prevent contamination and potential contamination of waters of the State. It must include how the manure pit and bunker will be managed as well as how milk parlor and barn water will be managed. The plan would include detailed information on how land application of manure and wastewater will be managed to prevent runoff and contamination of waters of the state. Manure and

wastewater removed from the dairy's storage structures must be properly applied to crop fields or otherwise properly managed.

b. The plan must identify a permanent solution for preventing animal access to Cutler Reservoir.

c. The waste management plan must demonstrate that the dairy has containment capacity and freeboard for a 25-year, 24-hour storm event and that the dairy and storage facilities will be managed to provide storage of a 25-year, 24-hour storm event, precipitation, and an appropriate interim storage period until a full nutrient management plan can be implemented with an appropriate permanently established storage period.

The dairy is required to have a professional engineer or certified planner evaluate the storage capacity requirements needed for the waste management plan and NMP as well as the storage capacities of the structures that will be used. If the manure pit and manure bunker are to be used after August 15, 2010, the waste management plan must demonstrate that those structures have capacity for the runoff and precipitation of a 25-year, 24-hour storm event and a proper interim storage period. In addition as part of demonstrating proper capacity and containment, the liquid waste storage structure must be completely emptied and available for DWQ inspection for construction integrity by August 15, 2010. The solid waste structures must be emptied by November 1, 2010. Each structure must have a minimum freeboard determined by the engineer or certified planner for containment of the 25-year, 24-hour storm event. These freeboards must be maintained at all times, unless a 25-year, 24-hour storm event is actually received at the dairy.

d. The waste management plan must be prepared by a certified planner and follow Natural Resources Conservation Service (NRCS) practices and standards.

5. Operator is to have a Nutrient Management Plan (NMP) developed or updated by May 1, 2011. The NMP shall be implemented within 90 days of Executive Secretary approval. The deadline may be extended at the discretion of the Executive Secretary to accommodate funding or construction issues beyond the reasonable control of the Operator. NMP deadline extension will not be granted if the dairy is not in compliance with paragraphs 1 through 4 of this agreement.

a. The NMP must permanently address proper manure and process wastewater containment and management and proper nutrient land applications to cropland.

b. The NMP must also propose an NMP implementation schedule developed with the assistance of a certified planner. The implementation schedule would include any new construction; both with and without funding assistance from the NRCS or other source. The NMP would have to contain details and all procedures relating to application of manure and wastewater to cropland so that wastes are properly managed and nutrients are applied at agronomic rates of the crops. Some deadlines may need

to be established by funding and engineering assistance availability of NRCS, if funding were obtained. Deadlines are subject to approval by the Executive Secretary.

- c. The NMP must demonstrate compliance with Paragraphs 1 through 4 above.
 - d. The NMP will must be developed or updated and approved by a certified planner and follow Natural Resources Conservation Service practices and standards.
6. Any discharges to waters of the State must be reported to the Executive Secretary within 24-hours of the discharge by calling the AFO/CAFO Program Coordinator (currently Don Hall) at (801) 536-4492.

D. NOTICE

- 1. This Order shall not in any way relieve the Operator of any obligation to comply with any applicable municipal, county, state, or federal laws and regulations.
- 2. This Order is effective once signed by authorized agents from both parties.
- 3. This is a final administrative order which may be enforced in District Court.. The

Executive Secretary reserves the right to seek civil penalties pursuant to Utah Code Ann. §19-5-115(2).

DATED: June 15, 10

CARDON DAIRY

By Paul A Cardon
Paul Cardon
Owner

DATED: 10 August 2010

UTAH WATER QUALITY BOARD

Walter Baker
Walter Baker, Executive Secretary
Utah Water Quality Board

ATTACHMENT A



State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

Department of
Environmental Quality

Amanda Smith
Acting Executive Director

DIVISION OF WATER QUALITY
Walter L. Baker, P.E.
Director

Water Quality Board
Jay Ivan Olsen, *Chair*
Paula Doughty, *Vice-Chair*
Lou Ann Christensen
David F. Echols
Merritt K. Frey
Darrell H. Mensei
Leland J. Myers
Gregory L. Rowley
Steven P. Simpson
Amanda Smith
Daniel C. Snarr
Phil Wright
Walter L. Baker,
Executive Secretary

July 30, 2009

CERTIFIED MAIL
(Return Receipt Requested)

Paul Cardon
Cardon Dairy
4409 West 4700 North
Benson, Utah 84336

Dear Mr. Cardon:

Subject: Cardon Dairy Notice of Violation and Compliance Order, Docket No. I09-013

Pursuant to a site inspection on July 9, 2009 at the Cardon Dairy, the Division of Water Quality (DWQ) is issuing a 2nd Notice of Violation and Compliance Order (NOV/CO). Enclosed is the 2nd NOV/CO from the Utah Water Quality Board for your immediate attention.

The dairy must respond to this NOV/CO in writing within 30 days of the date the NOV/CO was mailed. Also, the dairy has 30 days to contest this action and reserve the right to a hearing before the Utah Water Quality Board, if desired. DWQ will contact you to arrange a settlement meeting after your 30-day response is received. Your cooperation with resolving this matter is appreciated.

Please call Don Hall at (801) 538-9251, if you have any questions.

Sincerely,

Utah Water Quality Board



Walter L. Baker, P.E.
Executive Secretary

WLB:dh:mc

cc: Amy Clark, EPA Region 8
Fred Nelson, Utah Attorney General Office
Amanda Smith, Utah Department of Environmental Quality
Bear River Health Department
F:\wp\CAFO Word files\inspections/Cardon second NOV cover ltr 7 30 09.doc

UTAH WATER QUALITY BOARD

IN THE MATTER OF CARDON DAIRY PAUL CARDON – Owner 4409 West 4700 North Benson, Utah 84335	NOTICE OF VIOLATION AND COMPLIANCE ORDER DOCKET NO. I09-13
--	---

A. STATUTORY AUTHORITY

This **NOTICE OF VIOLATION and COMPLIANCE ORDER** (hereinafter “**NOV/CO**”) is issued to **CARDON DAIRY** (hereinafter “**FACILITY**”) by the **UTAH WATER QUALITY BOARD** (hereinafter “**BOARD**”) under the Utah Water Quality Act, Utah Code Ann. §§ 19-5-101 through -124 (hereinafter “**ACT**”), including sections 19-5-104, -106, -111 and -115. This **NOV/CO** is also issued in accordance with the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-101 through -601. The **BOARD** has delegated the **EXECUTIVE SECRETARY** of the **BOARD** (hereinafter “**EXECUTIVE SECRETARY**”) to issue such **NOTICES AND ORDERS** in accordance with §19-5-106(8) of the Utah Code.

**B. BACKGROUND AND PURPOSE OF THIS
NOTICE OF VIOLATION AND COMPLIANCE ORDER**

Utah Division of Water Quality (hereinafter “**DWQ**”) employees inspected the **FACILITY** on March 24, 2009. A Notice of Violation/Compliance Order was issued to the **FACILITY** on May 18, 2009. The May 18, 2009 Notice of Violation/Compliance Order required the **FACILITY** to, among other things: comply with all applicable provisions of the Utah Water Quality Act, the Water Quality rules in the Utah Administrative Code and the Compliance Order; to prepare and implement a waste management plan for the period before a nutrient management plan could be prepared; and to prepare and implement a nutrient management plan.

On July 9, 2009, Don Hall and Mike Herkimer of **DWQ**, visited the **FACILITY** to inspect it and observe any progress the **FACILITY** had made toward compliance and to observe any new or continuing violations of Utah administrative code and statutes by the **FACILITY**. Mr. Hall and Mr. Herkimer at that time observed conditions that were currently causing discharges to the Cutler Reservoir, and further conditions that posed a significant and immediate threat of causing discharges to the Cutler Reservoir. **The purpose of this NOV/CO is to require specific action in order to address these current and potential discharges in an appropriately short timeframe.**

This **NOV/CO** does not replace or supersede the **NOV/CO**, Docket No. I09-07, issued to the **FACILITY** on May 18, 2009. This **NOV/CO** places additional requirements upon the **FACILITY**.

C. APPLICABLE STATUTORY AND REGULATORY PROVISIONS

1. "Except as provided in this chapter or rules made under it, it is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed any wastes in a location where there is probable cause to believe it will cause pollution." **Utah Code Ann. § 19-5-107(1)(a).**
2. "It is unlawful for any person, without first securing a permit from the executive secretary as authorized by the board, to: (a) make any discharge or manage sewage sludge not authorized under an existing valid discharge permit." **Utah Code Ann. § 19-5-107(3)(a).**
3. "It shall be unlawful, and a violation of these regulations, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures." **Utah Admin. Code R. 317-2-7.2 (Narrative Water Quality Standards)**
4. "Waters of the state" means all streams, lakes, ponds, marshes, water courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102). **Utah Admin. Code Ann. R. 317-1-1.3.**

D. FINDINGS OF FACT

1. The **FACILITY** is a dairy owned and operated by Paul Cardon. The **FACILITY** is located at 4409 West 4700 North, Benson, Utah 84335. The **FACILITY** includes animal pens, milk barn, manure bunker, and other structures. The **FACILITY** confined approximately 100 cows at the time of inspection. The **FACILITY** confined approximately 100 cows on pasture that have access to Horseshoe Bend on Cutler Reservoir.
2. The **FACILITY** lies adjacent to and on the bank of Horseshoe Bend on Cutler Reservoir. Cutler Reservoir, and Horseshoe Bend on Cutler Reservoir, are waters of the State and waters of the United States.

3. On July 9, 2009, Don Hall and Mike Herkimer of DWQ, visited the FACILITY to inspect it and observe any progress the FACILITY had made toward compliance and to observe any new or continuing violations of Utah administrative code and statutes by the FACILITY. Mr. Hall and Mr. Herkimer observed the following during that inspection:
 - a. The FACILITY utilizes a manure bunker to contain liquid and solid manure from the milk barn and runoff from the area in proximity to the milk barn. Liquid wastewater from the milk barn is pumped daily to the manure bunker. Wastewater from the milk barn includes manure and small amounts of spilled feed, milk, and cleaning and disinfection agents. This bunker is located upgradient and approximately 25 feet from the reservoir. Horseshoe Bend lies to the south of the manure bunker.
 - b. The manure bunker was extremely full with manure, liquid and at least two dead animals. Manure solids accumulation in the bunker is excessive. Weeds are growing on the solids. The water level in the bunker was observed to be within 8 inches of the top of the bunker's wall. Any liquid or solid manure that overflows the bunker will either flow directly to the reservoir or will later runoff to the reservoir with precipitation, depending upon the volume overtopping the structure. Some of the manure solids that were being stored within the bunker were at an elevation that was above the top of the walls of the structure.
 - c. The manure bunker is estimated to be approximately 3,500 square feet in area and reported by Mr. Cardon to be eight to ten feet in depth.
 - d. Five cows were photographed standing within the waters of Cutler Reservoir at the time of the inspection. Some of the cows were approximately 40 feet out into the Reservoir, and were wading in approximately two feet of water.
 - e. The remainder of the FACILITY's cows were located in a pasture where they have direct access to the Reservoir for drinking water. Mr. Hall and Mr. Herkimer observed that a fence was not present to keep cattle out of the water for approximately 200 yards of the Reservoir's shoreline. FACILITY owner Paul Cardon acknowledged to Mr. Hall and Mr. Herkimer that there was no fence in this area to keep cows out of the Reservoir.
 - f. Solid manure and bedding material were observed on the bank of Cutler Reservoir in a location where, during an inspection on March 24, 2009, Mr. Hall had observed calf hutches.
4. The eight or fewer inches of freeboard between the top of the walls of the manure bunker and the liquid and solid waste contained within the bunker does not provide sufficient remaining capacity to allow for adequate containment of barnwater and precipitation. With daily barnwater filling the bunker, the structure will shortly be at full capacity. Any rain event prior to dewatering the structure would shorten the storage period or cause overtopping of the

structure. The bunker's freeboard does not allow for containment of a 25-year, 24-hour storm event. Freeboard for the 25-year, 24-hour storm event should always be maintained in the bunker.

5. As a result of the inadequate freeboard in the manure bunker, the liquid and solid manure are stored in an area and in a manner where there is probable cause to believe the liquid and solid manure will be discharged to the Reservoir.
6. Because the FACILITY's cows were wading in the waters of Cutler Reservoir, manure was discharged directly into the Reservoir.
7. The FACILITY does not have a Utah Pollutant Discharge Elimination System (hereinafter "UPDES") permit or other permit issued by the DWQ to provide approval for discharging manure or manure runoff to waters of the State.
8. The FACILITY is out of compliance with the Order of the NOV/CO issued to the FACILITY on May 18, 2009. This includes not taking immediate actions to stop all discharges to Cutler Reservoir, failure to notify DWQ of the direct animal discharges and other discharges, failure to prepare and submit a waste management plan (hereinafter "WMP"), and failure to submit monthly reports for May, June and for July (to date).
9. According to the Order in the May 18, 2009, NOV/CO, the FACILITY has until September 18, 2009, to prepare a nutrient management plan (hereinafter "NMP") in accordance with United States Department of Agriculture Natural Resources Conservation Service (hereinafter "NRCS") standards and practices, have the NMP approved by a certified planner, and to submit the NMP to DWQ for approval.

E. VIOLATIONS

Based on the foregoing Findings of Fact, the FACILITY has violated the following:

1. As of July 9, 2009, the FACILITY had allowed liquid manure and solid manure in the manure bunker and manure on the Reservoir bank in the calf hutch area to be stored in a manner that is likely to cause pollution to the Reservoir in violation of Utah Code Ann. §19-5-107(1)(a).
2. On July 9, 2009, the FACILITY discharged to Cutler Reservoir through direct animal contact in violation of Utah Code Ann. §19-5-107(1)(a).
3. On July 9, 2009, the FACILITY discharged to the Reservoir through direct animal contact without a valid permit in violation of Utah Code Ann. §19-5-107(3)(a).
4. On July 9, 2009, the FACILITY discharged to the Reservoir through direct animal contact in violation of the Narrative Water Quality Standards found in Utah Admin. Code R. 317-2-7.2.

F. ORDER

Any compliance schedules submitted by the **FACILITY** as required by this **NOV/CO** must be submitted by the deadlines established in this **ORDER** and approved by the **EXECUTIVE SECRETARY**. Once the compliance schedules are approved by the **EXECUTIVE SECRETARY**, the compliance schedules must be implemented according to the deadlines and requirements established in the compliance schedules and/or this **ORDER**. Once approved, time frames and requirements of any compliance schedule become legally binding on the **FACILITY**.

Based on the foregoing **FINDINGS OF FACT** and **VIOLATIONS** and pursuant to **Utah Code Ann. §§ 19-5-107 and -111**, the **FACILITY** is **HEREBY ORDERED** to:

1. Remove liquid and solid manure and other wastes from the manure bunker so that the level of all liquid and solid waste remaining within the bunker is three feet or more below the top of the bunker wall. The **FACILITY** shall remove this volume of waste on or before August 27, 2009. Management of the liquid and solid manure and other waste remaining in the manure bunker after this initial removal shall be governed by the requirements of the Notice of Violation/Compliance Order, Docket No. I09-07, issued by **DWQ** on May 18, 2009. Manure and liquid manure shall not be allowed into the Reservoir during removal or at any time. Removed manure and liquid manure will be properly contained and/or land applied according to agronomic rates of the crop(s).
2. Submit a plan to **DWQ** detailing how removed manure and liquid manure from the manure bunker will be stored and/or land applied. **DWQ** must approve the plan prior to liquid and solid manure removal from the manure bunker. The **FACILITY** shall submit the plan, which will include the required certification language found in Part G below, to **DWQ** on or before August 13, 2009.
3. Take all actions necessary to prevent dairy and any beef cattle access to Cutler Reservoir including, if necessary, providing an alternate drinking water source for the animals. The **FACILITY** shall comply with this requirement on or before August 27, 2009.
4. Remove manure and bedding material from the bank where the calf hutches were previously located. The manure and bedding must be properly stored or land applied to cropland at agronomic rates for the crops. The **FACILITY** shall comply with this requirement on or before August 13, 2009.
5. Prepare and submit past-due and future monthly reports as required by the Notice of Violation/Compliance Order, Docket No. I09-07. Monthly reports past-due as of issuance of this **NOV/CO**, are due August 13, 2009.
6. Prepare and submit the **WMP** as required by the Notice of Violation/Compliance Order, Docket No. I09-07. The **WMP** must be submitted to **DWQ** by August 27, 2009.

7. Comply with all other requirements and deadlines of the Notice of Violation/Compliance Order, Docket No. I09-07, not otherwise revised or addressed by the **ORDER** of this **NOV/CO**.

G. NOTICE

This **NOV/CO** is effective immediately. The **FACILITY** may contest this **NOV/CO** by submitting a request for Agency Action in writing as specified in **Utah Admin. Code R. 317-9-3**. Any such request must be received by the **EXECUTIVE SECRETARY** within 30 days of the **NOV/CO**'s issuance or the **NOV/CO** shall become final.

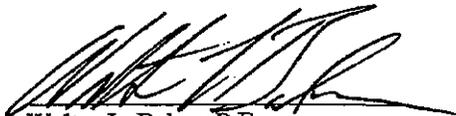
The **FACILITY** may also request a stay of this Compliance Order as provided in **Utah Administrative Code R317-9-10**.

Compliance with the provisions of this **ORDER** is mandatory. The information requested will be considered in the evaluation of the extent of your compliance with the Water Quality Act and its underlying regulations and permits. Failure to respond fully and truthfully, or to adequately justify such failure to respond may subject the owners and operators of the **FACILITY** to further civil penalties or criminal fines under **Utah Code Ann. § 19-5-115**.

All reports required under this **ORDER** must be accompanied by the following certification, which is to be signed in accordance with **Utah Admin. Code R. 317-8-3.4(4)**: *"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."*

Utah Code Ann. § 19-5-115 provides that violation of the **ACT** or a related order may be subject to a civil penalty of up to \$10,000 per day of violation. Under certain circumstances of willfulness or gross negligence, violators may be fined up to \$25,000 per day of violation.

Signed this 30 day of July, 2009
Utah Water Quality Board



Walter L. Baker, P.E.
Executive Secretary