

UTAH WATER QUALITY BOARD

IN THE MATTER OF PYRENEES DAIRY PYRENEES DAIRY PO Box 340 Hyrum, Utah 84319	DOCKET NUMBERS I11-07SA SETTLEMENT AGREEMENT UPDES Permit No. UTG080015
--	--

This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is entered into between **PYRENEES DAIRY** (hereinafter "**OPERATOR**") and the **UTAH WATER QUALITY BOARD** (hereinafter the "**BOARD**") concerning violations of the *Utah Water Quality Act* (hereinafter "**ACT**"), *Utah Code Annotated*, and the *Utah Administrative Code* (hereinafter "**UAC**").

1. The **BOARD** has authority to administer the **ACT**, as amended 1953.
2. The **EXECUTIVE SECRETARY** of the **BOARD** (hereinafter the "**EXECUTIVE SECRETARY**") will administer the terms and provisions of this **AGREEMENT**.
3. The **BOARD** and the **OPERATOR** now wish 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 of the factual allegations 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. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number I11-07 (hereinafter "**NOTICE**"), between the **OPERATOR** and the **BOARD**, issued to the **OPERATOR** on June 21, 2011 by the **BOARD**. It does not in any way relieve the **OPERATOR** from any other obligation imposed under the **ACT** or any other state or federal laws.
5. This **AGREEMENT** takes into account efforts by the **OPERATOR** to resolve the violations cited in the **NOTICE**.

6. In resolution of said **NOTICE** referenced in Paragraph 4, the **OPERATOR** agrees to the following settlement terms:
- A. **Effective immediately**, the **OPERATOR** agrees that the dairy will not discharge manure, compost, pen runoff, parlor water, barn water, mortality runoff, feed runoff, field runoff with manure, or other pollutants to waters of the State unless allowed under terms of a Utah Pollutant Discharge Elimination System (hereinafter "**UPDES**") permit.
 - B. **Effective immediately**, in accordance with the dairy's permit and comprehensive nutrient management plan (hereinafter "**CNMP**"), the **OPERATOR** agrees to properly manage waste storage structures at levels such that the dairy will not discharge manure, compost, runoff, milk parlor wastewater, and other wastes to waters of the State.
 - C. **Effective immediately**, and also upon any update of the dairy's **CNMP**, the **OPERATOR** agrees to update and maintain the dairy's **CNMP** to ensure that the **CNMP** provides the content required by the permit and Natural Resources Conservation Service (hereinafter "**NRCS**") practices. Any and all **CNMP** revisions must be approved by a certified planner.
 - D. **Prior to April 1, 2012**, the **OPERATOR** agrees to, as needed, update the dairy's **CNMP** to provide the following content in accordance with permit requirements and **NRCS** practices:
 - 1. Proper winter applications. Winter applications of manure and other nutrients will be addressed, including winter applications to only those fields approved for winter application; and
 - 2. Manure incorporation. Incorporation of manure and nutrients into soil will occur within 48 hours of any application. If precipitation is forecasted or expected within 48 hours of the application, manure incorporation shall be immediate.
 - E. Prior to **May 1, 2012**, the **OPERATOR** agrees to fully implement the **CNMP** as approved by the certified planner. The deadline includes any facility construction needed to implement the **CNMP**. The **CNMP** must be implemented following **NRCS** practices and standards and according to permit requirements.
 - F. **Effective immediately**, the **OPERATOR** agrees to report any discharges to waters of the State to the **EXECUTIVE SECRETARY** within 24-hours of the discharge by calling the AFO/CAFO Program Coordinator (currently Don Hall) at (801) 536-4492. If Don Hall can not be contacted immediately, leave a message with the date and time of the phone call.

- G. **Effectively immediately**, the **OPERATOR** agrees to comply with the Settlement Agreement for NOV/CO #I09-08. This includes completion and proper utilization of new solid or liquid manure containment structures. Compliance to the original settlement agreement also includes obtaining any Construction or Ground Water permit if needed, and compliance with any other Ground Water Quality requirements needed for the dairy.
- H. The **OPERATOR** agrees to pay a penalty of **\$3,500**. One payment of **\$3,500** is due prior to **April 1, 2012**. The \$3,500 penalty includes a \$1,000 stipulated penalty for not reporting a discharge per the original settlement agreement.
- I. The **OPERATOR** agrees to pay stipulated penalty amounts for conditions of noncompliance with this **AGREEMENT**. The dairy's partial compliance to the requirements in this **AGREEMENT** shall be counted noncompliance and subject to the stipulated penalties. If the **OPERATOR** fails to comply with this **AGREEMENT**, the **OPERATOR** will pay the stipulated amounts below within **30 days** of demand by the **EXECUTIVE SECRETARY**.

REQUIREMENT	STIPULATED PENALTY
Prevention of any discharge to waters of the State as in paragraph 6A.	A penalty according to any new enforcement action.
Develop, update, and implement the dairy's CNMP as required in paragraph's 6B, 6C, 6D, and 6E.	\$100 per day for every day of CNMP noncompliance, plus any penalty according to any new enforcement action.
Report any discharges to waters of the State within 24-hours as required in paragraph 6F.	\$2,000.00 per day for not reporting, plus a penalty associated with any new enforcement action.
Comply with the requirements of paragraph 6G.	Penalty according to the stipulated penalties in the settlement agreement for the first NOV/CO, plus any penalty according to any new enforcement action.
Pay \$3,500 prior to April 1, 2012 , as required in paragraph 6H. The penalty payment is late on April 1, 2012.	\$100.00 per calendar day after April 1, 2012 unless prior to the deadline, the OPERATOR requests and receives written approval to postpone the payment deadline from the EXECUTIVE SECRETARY .

7. Nothing contained in this **AGREEMENT** shall preclude the **BOARD** from taking additional actions to include additional penalties against the **OPERATOR** for violations not resolved by this **AGREEMENT**.
8. If an agreement between the **OPERATOR** and the **EXECUTIVE SECRETARY** cannot be reached in a dispute arising under any provisions of this **AGREEMENT**, then the **OPERATOR** or the **EXECUTIVE SECRETARY** 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.
9. Nothing in this **AGREEMENT** shall constitute a waiver by the **OPERATOR** to raise in defense any legal or factual contention to future allegations of noncompliance.
10. 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.
11. This **AGREEMENT** shall not in any way relieve the **OPERATOR** of any obligation to comply with any applicable municipal, county, state, or federal laws and regulations.
12. This **AGREEMENT** is effective once signed by authorized agents from both parties.
13. This **AGREEMENT** is in effect until all the requirements of this **AGREEMENT** are met to the satisfaction of the Executive Secretary.

AGREED to this ____ day of _____, 2012.

PYRENEES DAIRY

UTAH WATER QUALITY BOARD

By _____
Authorized Agent

By _____
Executive Secretary