



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Amanda Smith
Executive Director

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

MAR 20 2014

**CERTIFIED MAIL,
(Return Receipt Requested)**

Jay Rawlings
General Manager/VP Operations
Swift Beef Hyrum Plant
410 North 200 West
Hyrum, Utah 84319

Dear Mr. Rawlings:

Subject: Public Notice of Proposed Settlement Agreement Docket No. I14-02SA,
Swift Beef

Enclosed is a copy of the Public Notice of the proposed Settlement Agreement between the Utah Division of Water Quality and Swift Beef.

If you have any questions with regards to this matter, please contact Kim Shelley at (801) 801-536-4385 or kshelley@utah.gov.

Sincerely,

John Kennington, P.E., Manager
UPDES Engineering Section

JK:KS:ev:pe

- Enclosures:
1. Transmittal Letter (DWQ-2014-004223)
 2. Letter to the Newspaper (DWQ-2014-004223)
 3. Public Notice (DWQ-2014-004225)
 4. Penalty Calculations (DWQ-2014-003252)
 5. Penalty Justification (DWQ-2014-003250)
 6. Settlement Agreement (DWQ-2014-003251)

cc: Craig Anderson, Office of the Attorney General
Grant Koford, Bear River Health Department
Stephanie Gieck, Enforcements EPA Region VIII via email: Gieck.Stephanie@epa.gov
Don Summit, Swift Beef Hyrum Plant via email: don.summit@jbssa.com

DWQ-2014-004223



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MAR 20 2014

The Herald Journal
75 West 300 North
Logan, UT 84321

Email: legals@hjnews.com

ATTENTION: Legal Advertising Department

This letter will confirm authorization to publish the attached NOTICE in The Herald Journal in the first available edition. Please mail the invoice and affidavit of publication to:

Department of Environmental Quality
Division of Water Quality
Attn: Stacy Carroll
195 N. 1950 W.
P.O. Box 144870
Salt Lake City, Utah 84114-4870

If there are any questions, please contact Edith Van Vleet at (801) 536-4397. Thank you for your assistance.

Sincerely,

John Kennington, P.E., Manager
UPDES Engineering Section

JK:KS:ev:pe

DWQ-2014-004224



State of Utah

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March 21, 2014

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY

PUBLIC NOTICE OF SETTLEMENT AGREEMENT, DOCKET NO. I14-02SA

PURPOSE OF PUBLIC NOTICE

This notice is to declare that the State of Utah has reached a settlement agreement with Swift Beef. This Public Notice is issued pursuant to Utah Administrative Code R317-8-1.9, to provide opportunity for public comment on the proposed settlement of an enforcement action. The proposed settlement agreement is for the purpose of resolving alleged violations of Utah Code Annotated 19-5 (Water Quality Act), and is a resolution of enforcement proceedings brought against Swift Beef.

PUBLIC COMMENTS

Public comments are invited any time prior to close of business April 21, 2014. Comments may be directed to the Department of Environmental Quality, Division of Water Quality, 195 North 1950 West, P.O. Box 144870, Salt Lake City, Utah 84114-4870.

FURTHER INFORMATION

The settlement agreement is available for public review under "Public Participation" at www.waterquality.utah.gov/PublicParticipation. If internet access is not available, a copy may be obtained by calling Kim Shelley at 801-536-4385. Written public comments can be submitted to: Kim Shelley, P.O. Box 144870, Salt Lake City, Utah 84114-4870 or by email at: kshelley@utah.gov. The deadline to receive comments is close of business April 21, 2014. After considering public comment the Director of the Division of Water Quality may execute the settlement agreement, revise it, or abandon it.

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DWQ-2014-004225

UPDES PENALTY CALCULATION SHEET

LEGAL NAME AND MAILING ADDRESS OF OPERATOR		UPDES Permit Number		FACILITY DESCRIPTION / CONTACT NAMES			
SWIFT HYRUM BEEF 410 NORTH 200 WEST HYRUM, UTAH		UT0000281 2/24/2014 SWIFT BEEF 114-02 KIM SHELLEY		Name of Site Contact: DON SUMMIT Name of Authorized Official: JAY RAWLINGS Telephone Number: 435-245-2351			
PERMIT COVERAGE		Credit for Degree of Negligence		Credit for Good Faith Efforts			
Category	Category of Violation Enter Max \$ Per Day	Credit for Degree of Negligence	Credit for History of Compliance	Total Penalty Per Day	No. of Violation Days	Dollar Amount	
Category A	\$7,000-\$10,000 Reduction	0% \$0	0% \$0	\$10,000	0	\$0	
Category B	\$2,000-\$7,000 Reduction	0% \$0	0% \$0	\$7,000	0	\$0	
Category C	\$500-\$2,000 Reduction	50% -\$250	50% -\$250	\$1,000	1	\$1,000	
Category D	\$0-\$500 Reduction	0% \$0	0% \$0	\$500	0	\$0	
Economic Benefit		Enter Annual O & M Costs (Avoided)		Enter Date Noncompliance Began		Enter Compliance Date	
(Enter Numbers From BEN worksheet)							
						Total BEN:	\$0
						Total Penalty:	\$1,000

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF SWIFT BEEF HYRUM PLANT 410 NORTH 200 WEST HYRUM, UTAH	DOCKET NUMBER I14-02 SETTLEMENT AGREEMENT
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This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **SWIFT BEEF HYRUM PLANT** (hereinafter "**OPERATOR**") and the **DIRECTOR OF THE 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*, (hereinafter the "**ACT**").
2. The **UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)** 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 **I14-02** (hereinafter the "**NOTICE**"), between the **OPERATOR** and the **DIRECTOR**, issued to the **OPERATOR** on March 6, 2014, 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.
6. In resolution of said **NOTICE** referenced in Paragraph 5 of this **AGREEMENT**, the **OPERATOR** agrees to;

Pay a total penalty amount of \$1,000.00 within 30 days of the effective date of this **AGREEMENT** by check made payable to the State of Utah.

SWIFT BEEF HYRUM PLANT
Settlement Agreement, Docket No. I14-02

The penalty has been determined using the *Penalty Criteria for Civil Settlement Negotiations, Utah Administrative Code ("UAC") R317-1-9* which considers such factors as the nature, severity and extent of the violations, history of noncompliance, degree of willfulness and/or negligence, good faith efforts to comply, and economic benefit. Submittals required under this **AGREEMENT** shall be delivered or mailed to the Division of Water Quality, Department of Environmental Quality, 195 North 1950 West, P.O. Box 144870, Salt Lake City, Utah 84114-4870.

7. Nothing contained in this **AGREEMENT** shall preclude the **DIRECTOR** from taking additional actions to include additional penalties against the **OPERATOR** for permit violations not resolved by this **AGREEMENT**.
8. 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 **DEQ** 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 for 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.

AGREED to this ____ day of _____, 2014.

SWIFT HYRUM BEEF

**UTAH DIVISION of WATER
QUALITY**

By _____
Authorized Agent

By _____
Director

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,
SWIFT BEEF HYRUM PLANT
SETTLEMENT AGREEMENT DOCKET NO. I14-02**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-9*).

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance;
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1). the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator
- 6) good faith efforts of the violator
- 7) ability of the violator to pay;
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

**CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL
CONSIDERATIONS**

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.
- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and
- Good faith efforts to comply.

Adjustments to the civil penalty include:

- The economic benefit gained as a result of non-compliance,
- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

PENALTY - The penalty for FACILITY has been calculated as follows:

Gravity Component:

The gravity component of the penalty is based on a discharge to an irrigation canal due to a plug in a sewer collection line at the plant. The discharge occurred for approximately one hour. Due to the fact that the overflow of approximately 600 gallons occurred during the non-irrigation season and that the irrigation ditch receives Hyum's WWTP discharge and other inputs before reaching Spring Creek, DWQ believes that a Category C penalty is appropriate.

Credit was given for degree of negligence at 75%. SWIFT does have a monthly cleaning frequency of the plant collection lines, however, an alarm system was not installed at the time of the event nor did SWIFT routinely inspect the lines which would have alerted them to the presence of rocks in the line that likely contributed to the plug which caused the overflow.

Credit was given for history of compliance at 50% since SWIFT has had similar problems with overflows from their collection system in the past. A NOV was issued in 2011 for an overflow to Waters of the State due to a plug in the plant collection lines due to a different issue.

Credit was given for good faith efforts to comply at 100% since SWIFT notified DWQ within one hour of becoming aware of the overflow, immediately addressed the overflow and ran a root cause analysis and created and began implementation of an action plan to prevent future overflows.

Economic Benefit Justification:

BEN is a program developed by EPA to determine the economic benefit a violator has gained by not complying with regulations. A BEN was not done for this SA because of the actions taken immediately in response to the event as well as actions taken to resolve the issues which caused the overflow to Waters of the State. There was no economic benefit gained by SWIFT in this occurrence.