

UTAH DIVISION OF WATER QUALITY

IN THE MATTER OF D&S Dairy Steven Griffin 7000 West 7200 North Newton, Utah 84404	DOCKET NUMBER. UTI- 17-01 STIPULATED COMPLIANCE ORDER
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A. PURPOSE

1. This **Stipulated Compliance Order (AGREEMENT)** is entered into voluntarily by and among the Director of the Utah Division of Water Quality (**DIRECTOR**) and D&S Dairy (**DAIRY**). The **DIRECTOR** and **DAIRY** are jointly referred to hereafter as the (**PARTIES**). The purpose of this **AGREEMENT** is to resolve the illicit discharge of manure water to a ditch that connects to a drainage to Cutler Reservoir. The ditch, drainage, and the Cutler Reservoir are waters of the State. The discharge was observed by the Utah Division of Water Quality (**DIVISION**) on February 13, 2017.

B. AUTHORITY

1. The **DIRECTOR** of the **DIVISION** is authorized to issue, continue in effect, renew, revoke, modify or deny discharge permits and to issue orders in accordance with *Section 19-5-106*, and to specify a schedule of compliance in a permit leading to compliance with the Utah Water Quality Act (**ACT**) and Water Quality Administrative Code (**CODE**).
2. The **DIVISION** was created to administer the **ACT** under the immediate direction and control of the **DIRECTOR** pursuant to *Section 19-1-105* of the Utah Code Annotated.
3. The State of Utah 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), known in Utah as the Utah Pollution Discharge Elimination System (**UPDES**).
- 4 *Utah Code Ann. § 19-5-107(1)(a)*. “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.”

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C. FINDINGS OF FACT

1. The **DAIRY** is a medium size animal feeding operation located in Newton, Utah, several miles from the reservoir. The **DAIRY** confines an estimated 400 cows.
2. The **DAIRY** has insufficient storage capacity to properly store runoff and wastewater during periods of high precipitation and snow melt.
3. The **DAIRY** allowed discharges to a roadside ditch that connects to the Cutler Reservoir through an un-named drainage.
4. On February 13, 2017, Don Hall of the **DIVISION** observed discharges from the **DAIRY** to the ditch.
5. The ditch, drainage, and Cutler Reservoir are waters of the State per *Utah Administrative Code R317-8-1.5(59)* and *R317-8-10.2*. Discharges to state waters violate *Utah Code Ann. § 19-5-107(1)(a)*, as shown in paragraph B.4 above.
6. The **DAIRY** has not received previous warning letters or enforcement from the **DIVISION**.
7. The water discharged and the type of discharge that occurred this winter do not meet the definitions of agriculture water or agriculture discharge in *UCA § 19-5-102(1) and (2)*.
8. The **DIVISION** has determined a penalty for this incident according to the guidelines found in *Utah Administrative Code R317-1-8*, Penalty Criteria for Civil Settlement Negotiations. The criteria considers such factors as the nature, severity and extent of the violations, history of noncompliance, degree of willingness, negligence, good faith efforts to comply, and economic benefit of the **DAIRY**'s delayed compliance.

D. VIOLATIONS

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

1. Utah Code Ann. § 19-5-107(1)(a) for causing pollution which could be harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water and described in the Findings of Fact, paragraphs C.3 and C.4.

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E. AGREEMENT

Based on the foregoing **FINDINGS OF FACT** and **VIOLATIONS**, the **DIRECTOR** hereby orders, and the **DAIRY** agrees to, comply with the requirements and conditions of the **AGREEMENT** below. The **DAIRY** is ordered and agrees to:

1. Immediately initiate all action required to come into compliance with all applicable provisions of the Utah Water Quality Act and the Water Quality rules in the Utah Administrative Code.
2. Immediately cease all feed and manure discharge to waters of the State from the **DAIRY's** production area, waste storage areas, and fields.
3. Take immediate action to prevent future discharges to waters of the State from the **DAIRY**.
4. Report any future discharges to waters of the State to the **DIVISION** within 24-hours of any discharge.
5. As soon as possible and no later than the deadlines in this **AGREEMENT** and any compliance schedule, comply with the requirements of the **AGREEMENT**.
6. Cooperate with the **DIVISION** in preparing a compliance schedule until the Nutrient Management Plan (**NMP**) is fully implemented at the **DAIRY**. A compliance schedule should be complete by **July 1, 2017**.
7. Prepare and implement the **DAIRY's NMP** according to all applicable and current Natural Resources Conservation Service (**NRCS**) practices and standards.
8. The revised **NMP** must be approved by a **NRCS** certified planner. The **NMP** must be submitted to the **DIVISION** for review by **August 15, 2017** and revised thereafter as needed to meet the **DIVISION's** water quality requirements. The **DIVISION** must approve the **NMP** prior to full implementation.
9. The **NMP** must be implemented on or before **November 1, 2017** in accordance with all applicable **NRCS** practices and standards.
10. Submit to the **DIRECTOR**, within **30 days** of receipt of the signed **AGREEMENT**, a report which includes, but is not limited to, the following:
 - a. An account of the conditions and events leading up to, and surrounding the non-compliant discharges described in this **AGREEMENT**.
 - b. The current condition and status of the releases.
 - c. The **DAIRY's** plan to prevent future discharges.
11. The **DAIRY** may request a deadline extension to any deadline within this

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AGREEMENT for conditions beyond the reasonable control of the **DAIRY** and at a minimum of 30 days prior to the respective deadline. The **DIVISION** must approve the deadline for an extension to be granted.

12. The **DAIRY** agrees to pay a penalty in the amount of **\$3,836**. The penalty will held in abeyance if the **DAIRY** complies with the requirements of this **AGREEMENT**. The **DAIRY** will not be required to pay the penalty unless it fails to comply with this **AGREEMENT** by the deadline **November 1, 2017** or a **DIVISION** approved deadline extension.
13. Should the **DIVISION** determine that the **DAIRY** did not fully comply with the deadlines and requirements of the **AGREEMENT**, the **DAIRY** must pay **\$3,836** as notified by the **DIVISION**.
14. In addition to the penalty requirements in 12 and 13 above, the **DAIRY** will be required to pay reimbursement costs to the **DIVISION** if the **DAIRY** fails to comply with the **AGREEMENT**. Any reimbursement costs will be determined after the final **November 1, 2017** deadline or **DIVISION**-approved extension. The **DIVISION** will track the hours spent on the enforcement case and bill the **DAIRY** after the final deadline, should the **DAIRY** fail to comply. Reimbursement cost will be determined by multiplying the number of **DIVISION** hours by \$90 per hour.
15. By executing this **AGREEMENT**, the **DAIRY** makes no admissions concerning the findings and denies liability for the findings made within. The **PARTIES** understand and agree that this **AGREEMENT** is being entered into in an effort to resolve any dispute between the parties and avoid further dispute, discussion, or action concerning the matters related thereto.
16. Any future disputes arising hereunder are subject to Utah Code Ann. 19-5-112, 19-1-301 and 19-1-301.5; and R305-7 of the Utah Administrative Code, and any other applicable state law.
17. Neither execution of this **AGREEMENT**, nor the **DAIRY**'s compliance to the conditions and requirements of this **AGREEMENT**, shall relief the **DAIRY** of any future enforcement actions and penalties for future non-compliance to Utah's water quality statutes and administrative code by the **DAIRY**.
18. The undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this **AGREEMENT** and to bind the party they represent to this **AGREEMENT**.
19. This **AGREEMENT** is effective upon signature by the **DAIRY** and **DIRECTOR**.

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IT IS SO AGREED.



Steven Griffin, Owner
D&S Dairy

Date: 7/7/2017

IT IS SO ORDERED.

Kim Shelley, Acting Director
Utah Division of Water Quality

Date: _____

DWQ-2017-004427