



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WATER QUALITY
Erica Brown Gaddis, PhD
Director

FILE COPY

AUG 07 2017

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

Kelly Larkin, Owner
Kelly Larkin Dairy
5470 West 1150 South
Ogden, UT 84404

Dear Mr. Larkin:

Subject: Public Notice of Proposed Settlement Agreement Docket No UT-I17-06 SA,
Kelly Larkin Dairy

Enclosed is a copy of the Public Notice of the proposed Settlement Agreement between the
Division of Water Quality and the Kelly Larkin Dairy.

If you have any questions with regards to this matter, please contact Don Hall at (801) 801-536-
4492 or dghall@utah.gov. This information will also be made available on-line at
<http://www.deq.utah.gov/NewsNotices/notices/water/index.htm>.

Sincerely,

Kim Shelley, Manager
Permitting, Engineering, and Compliance Branch

KS:ev:smm

Enclosure (1): 1. PN Document

cc: Craig Anderson, Attorney General Office (w/encl)
Lou Cooper, Weber-County Health Department
Jay Olsen, Utah Department of Agriculture and Food
DWQ-2017-007437



DWQ-2017-007437



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August 9, 2017

The Standard Examiner
332 W Ward Avenue
Ogden, UT 84412

ATTN: Legal Advertising Department
Email: legals@standard.net

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

Department of Environmental Quality
Division of Water Quality
Attn: Emily Canton
P.O. Box 144870
Salt Lake City, Utah 84114-4870

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

Sincerely,

Kim Shelley, Manager
Permitting, Engineering, and Compliance Branch

KS:ev:smm



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UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY

PUBLIC NOTICE OF STIPULATED COMPLIANCE ORDER, DOCKET NO. UT- I17-06

PURPOSE OF PUBLIC NOTICE

This notice is to declare that the State of Utah has reached a settlement agreement with Kelly Larkin Dairy. 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 a Stipulated Compliance Order. The proposed order 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 Kelly Larkin Dairy.

PUBLIC COMMENTS

Public comments are invited any time prior to close of business September 11, 2017. 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 Notices" at <https://deq.utah.gov/Divisions/dwq/info/notices.htm>. If internet access is not available, a copy may be obtained by calling Don Hall at 801-536-4492. Written public comments can be submitted to: Don Hall, P.O. Box 144870, Salt Lake City, Utah 84114-4870 or by email at: dghall@utah.gov. The deadline to receive comments is close of business September 11, 2017. After considering public comment the Director of the Division of Water Quality may execute the settlement agreement, revise it, or abandon it.

UTAH DIVISION OF WATER QUALITY

IN THE MATTER OF Kelly Larkin Dairy 5470 West 1150 South Ogden, Utah 84404	DOCKET NUMBER. UTI- 17-06 STIPULATED COMPLIANCE ORDER
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U12001599

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 Larkin 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 drain and roadside drainage that connects to the Weber River. Weber River is a water of the State. Evidence of the discharges were observed by the Utah Division of Water Quality (**DIVISION**) on February 14 and April 5, 2017. In addition to the discharges this winter, the dairy likely discharged during previous winters due to the dairy's lack of adequate wastewater control.

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 Utah Administrative 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."
5. *Utah Code Ann. § 19-5-114*. "Any person who spills or discharges any oil or other substance which may cause the pollution of the waters of the State shall immediately notify the Executive Secretary of the spill or discharge, and containment procedures undertaken, and a proposed procedure for cleanup and disposal, in accordance with rules of the board." (Water Quality Board)

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6. *Utah Administrative Code (UAC) R317-2-7.2.* "It shall be unlawful, and a violation of these rules, 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 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; or determined by biological assessments in Subsection R317-2-7.3."

C. FINDINGS OF FACT

1. The **DAIRY** operates a small dairy Ogden, Utah, less than one-quarter mile from Weber River. The **DAIRY** confines about 70 cows and dry cows.
2. The **DAIRY** has insufficient storage capacity to properly store runoff and wastewater during periods of high precipitation and snow melt. The **DAIRY**'s pond was designed for 12 cows, not 70 cows presently at the dairy. The dairy has several make-shift runoff collection areas but they insufficient in capacity to prevent runoff from the dairy with sufficient precipitation or snow melt.
3. The **DAIRY** allows discharges to a roadside drain that connects to the Weber River. Also, the **DAIRY** allows runoff and wastewater to flow to the roadside through two ditches. The **DIVISION** believes the dairy has likely discharged for years due to the dairy's inability to properly contain wastewater and runoff.
4. On February 14th and April 5, 2017, Don Hall of the **DIVISION** observed evidence of discharges to the drain and roadside. At times, discharge from the **DAIRY** could be a significant quantity.
5. The Weber River is a water of the State per *Utah Administrative Code R317-8-1.5(59)* and *R317-8-10.2*. Discharges to the Weber River violate *Utah Code Ann. § 19-5-107(1)(a)*, *Utah Administrative Code (UAC) R317-2-7.2*, and *UAC R317-8-10.3(4)*, shown in paragraphs of B.4, B.6, and B.7 above.
6. The **DAIRY** has not received previous warning letters or enforcement from the **DIVISION**. The **DAIRY** was unknown to the **DIVISION** until recently.
7. The water discharged and the type of discharge 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.

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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, paragraph C.4.
2. Utah Code Ann. § 19-5-114 for failing to immediately notify the Executive Secretary (DWQ Director) of the discharge described in Findings of Fact, paragraph C.4.
3. Utah Administrative Code (UAC) R317-2-7.2 for discharge described in Findings of Fact, paragraph C.4, that cause nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life in surface water.

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 actions necessary 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. Prepare **NMP** according to all applicable Natural Resources Conservation Service (**NRCS**) practices and standards.
7. The revised **NMP** must be approved by a **NRCS** certified planner if available, or a planner from a conservation district or the Utah Department of Agriculture and Food. The **NMP** must be submitted to the **DIVISION** for review by **October 1, 2017** and revised thereafter as needed to meet the **DIVISION's** water quality requirements.


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The **DIVISION** must approve the **NMP** prior to full implementation.

8. The **NMP** must be implemented on or before **October 1, 2018**, including any construction of new storage or management structures.
9. The **DAIRY** may request a deadline extension to any deadline within this **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.
10. The **DAIRY** agrees to pay a penalty in the amount of **\$7,677**. The penalty will be 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 **October 1, 2018** or a **DIVISION** approved deadline extension.
11. Should the **DIVISION** determine that the **DAIRY** did not fully comply with the deadlines and requirements of the **AGREEMENT**, the **DAIRY** must pay **\$7,677** as notified by the **DIVISION**.
12. 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 **October 1, 2018** 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.
13. 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.
14. 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 other applicable law.
15. Neither execution of this **AGREEMENT**, nor the **DAIRY**'s compliance to the conditions and requirements of this **AGREEMENT**, shall relieve 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**.
16. 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**.
17. This **AGREEMENT** is effective upon signature by the **DAIRY** and **DIRECTOR**.

UTAH DIVISION OF WATER QUALITY

IT IS SO AGREED.



Kelly Larkin, Owner
Larkin Dairy

Date: 7-26-17

IT IS SO ORDERED.

Erica Gaddis, Director
Utah Division of Water Quality

Date: _____