

UTAH DIVISION OF WATER QUALITY

<p>IN THE MATTER OF Miller Brothers Express Feedlot 560 West 400 South Hyrum, Utah 84319</p>	<p>DOCKET NUMBER. UTI- 17-02 STIPULATED COMPLIANCE ORDER</p>
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A. PURPOSE

1. This **STIPULATED COMPLIANCE ORDER (AGREEMENT)** is entered into voluntary by and among the Director of the Utah Division of Water Quality (**DIRECTOR**) and Miller Brothers Express Feedlot (**FEEDLOT**). The **DIRECTOR** and **FEEDLOT** are jointly referred to hereafter as the (**PARTIES**). The purpose of this **AGREEMENT** is to resolve the illicit discharge of manure water to an unnamed canal which connects to Spring Creek. Spring Creek connects to Logan River. The canal, Spring Creek, and Logan River are waters of the State. The discharge was observed on March 3, 2017, but likely occurred for at least 20 days prior to being discovered.

B. AUTHORITY

1. The **DIRECTOR** of the Utah Division of Water Quality (**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 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.”
7. *UAC R317-8-10.3(4).* “No AFO or CAFO shall discharge except as authorized under a current UPDES permit.”

C. FINDINGS OF FACT

1. The **FEEDLOT** operates a beef feedlot in Hyrum, Utah, less than one-half mile from a canal that flows to Spring Creek. The **FEEDLOT** is a Large Concentrated Animal Feeding Operation (**CAFO**) confining an estimated 1,200 animals on March 3, 2017.
2. The **FEEDLOT** has insufficient storage capacity to properly store wastewater during periods of high precipitation and snow melt even though a new wastewater storage pond was constructed in 2011.
3. The **FEEDLOT** allows discharges to a canal through an underground pipe (please see photos in the attached inspection report). The canal flows to Spring Creek, which connects to the Logan River several miles from the **FEEDLOT**. The source of the pipe’s discharged wastewater appears to be from a storage pond with tile drains under the pond. The pond was created by bordering a field. The **DIVISION** believes the tile drain system under the field was unknown to the **FEEDLOT** operator at the time of the discharge.
4. On March 3, 2017, Don Hall of the **DIVISION** observed a significant discharge of manure wastewater to the canal through the underground pipe. It is estimated that approximately 100 gallons per minute was flowing from the pipe. It is likely that the pipe discharged for at least 20 days which would result in a discharge of at least 2.88 million gallons over 20 days.
5. The canal, Spring Creek, and Logan River are waters of the State per *Utah Administrative Code R317-8-1.5(59)* and *R317-8-10.2*. The discharges observed on March 3, 2017 were to waters of the State in violation of *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. On November 10, 2010, a warning letter was sent to the **FEEDLOT** for wastewater from a runoff flowing to a ditch that connects to the canal. The **FEEDLOT** addressed the requirements of the warning letter, but may still lack sufficient storage

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capacity for winters of high precipitation.

7. Large CAFOs that discharge to waters of the State, such as the **FEEDLOT**, are required to obtain a **UPDES CAFO** permit per *UAC R317-8-10.3(4)*.
8. The water discharged and the type of discharge on March 3, 2017, do not meet the definitions of agriculture water or agriculture discharge in *UCA § 19-5-102(1) and (2)*.
9. 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 **FEEDLOT's** delayed compliance.

D. VIOLATIONS

Based on the foregoing Findings of Fact, the **FEEDLOT** 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.
4. UAC R317-8-10.3(4) for a Large CAFO that discharges without a current UPDES permit (CAFO permit) described in Findings of Fact, paragraph C.4.

E. AGREEMENT

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

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2. Immediately cease all feed and manure discharge to waters of the State from the **FEEDLOT's** production area, waste storage areas, and fields.
3. Take actions necessary to prevent future discharges to waters of the State from the **FEEDLOT**.
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. Obtain the CAFO permit by **November 1, 2017**. The deadline includes the 30-day public notice period for public comment.
7. Cooperate with DWQ in preparing a compliance schedule until the NMP and CAFO permit can be fully implemented at the **FEEDLOT**. A compliance schedule should be complete by **June 23, 2017**.
8. Revise the **FEEDLOT's** NMP according to **DIVISION** comments and requirements, CAFO permit requirements, and all applicable Natural Resources Conservation Service (NRCS) practices and standards.
9. The revised NMP must be approved by a NRCS certified planner. The NMP must be submitted to DWQ for review by **August 15, 2017** and revised thereafter as needed to comply with the CAFO permit.
10. The NMP must be implemented prior to receiving permit coverage on or before **November 1, 2017**.
11. 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. Actions taken to temporarily and then permanently remedy the situation surrounding the non-compliant discharges, and precautions taken to prevent future releases,
 - c. The current condition and status of the releases,
 - d. Document and report damages to any waters of the State or beneficial uses,
 - e. Prepare a plan to remediate any residual contaminants or damage from the discharges, if any still exist.
12. The **FEEDLOT** may request a deadline extension to any deadline within this **AGREEMENT** for conditions beyond the reasonable control of the **FEEDLOT** and at a minimum of 30 days prior to the respective deadline. The **DIVISION** must approve the deadline for the extension to be granted.

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13. The **FEEDLOT** agrees to pay a penalty in the amount of **\$6,617**, with an addition **\$9,795** being held in abeyance if the **FEEDLOT** complies with the requirements of this **AGREEMENT**. The **FEEDLOT** will not be required to pay the penalty held in abeyance unless it fails to comply with this **AGREEMENT** by the deadline **November 1, 2017**. The total penalty at the time of signing the **AGREEMENT** is **\$16,412**, with **\$9,795** being held in conditional abeyance.
14. The **FEEDLOT** shall pay **\$6,617** prior to **August 15, 2017**. Should the **DIVISION** determine that the **FEEDLOT** did not fully comply with the deadlines and requirements of this **AGREEMENT**, the **FEEDLOT** must pay **\$9,795** before **November 1, 2017**, or thereafter as notified by the **DIVISION**.
15. In addition to the penalties in requirements 13 and 14 above, the **FEEDLOT** will be required to pay reimbursement costs to the **DIVISION** if the **FEEDLOT** fails to comply with the **AGREEMENT**. Any reimbursement costs will be determined after the final **November 1, 2017** deadline or any **DIVISION**-approved extension. The **DIVISION** will track the hours spent on the enforcement case and bill the **FEEDLOT** after the final deadline, should the **FEEDLOT** fail to comply. Reimbursement cost will be determined by multiplying the number of **DIVISION** hours by \$90 per hour.
16. By executing this **AGREEMENT**, the **FEEDLOT** 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.
17. 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.
18. Neither execution of this **AGREEMENT**, nor the **FEEDLOT**'s compliance to the conditions and requirements of this **AGREEMENT**, shall relieve the **FEEDLOT** of any future enforcement actions and penalties for future non-compliance to Utah's water quality statutes and administrative code by the **FEEDLOT**.
19. 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**.
20. This **AGREEMENT** is effective upon signature by the **FEEDLOT** and **DIRECTOR**.

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IT IS SO AGREED.



Rod Garner, Manager
Miller Brothers Express Feedlot

Date: 6-14-17

IT IS SO ORDERED.

Kim Shelley, Acting Director
Utah Division of Water Quality

Date: _____

DWQ-2017-004395