

| | |
|---|---|
| PITMAN FAMILY FARMS, INC. C/O Mary Pitman, Registered Agent 15 East 1900 South Feed Mill Road P.O. Box 368 Moroni, UT 84646 UPDES Permit No. UT0020222 | DOCKET NO. UTM-19-01 SETTLEMENT AGREEMENT AND ORDER ON CONSENT |
|---|---|

This Settlement Agreement and Order (hereinafter "Agreement") is entered into voluntarily by and between the Director of the Utah Division of Water Quality (hereinafter the "Director"), and Pitman Family Farms Inc. (hereinafter "Pitman" or "Respondent"), jointly referred to hereafter as "the Parties." By entering into this Agreement, the parties wish, without further administrative or judicial proceedings, to resolve the issues arising out of alleged violations of the Utah Water Quality Act, Utah Code § 19-5-101 *et seq.* (the "Act"), and corresponding regulations in the Utah Administrative Code.

1. The Director has authority to administer the Act pursuant to Utah Code Section 19-1-105(1)(e), and to issue orders as specified in Utah Code Section 19-5-106(2)(d) and Section 19-5-111. The Director also has authority to settle any civil action initiated to compel compliance with the Act and implementing regulations pursuant to Utah Code Section 19-5-106(2)(k).
2. Pitman is a California Corporation registered and doing business in the State of Utah that operates a turkey processing plant located in Moroni, San Pete County, Utah.
3. The Director 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), the Utah version of which is the Utah Pollutant Discharge Elimination System (UPDES).
4. Pitman operates the Moroni City Wastewater Reclamation Facility which is owned by the town of Moroni under valid UPDES Permit number UT0020222, which allows and controls wastewater discharge from the Moroni City Wastewater Reclamation Facility. Pitman also operates an anerobic pond associated with its turkey processing plant, which is covered by Ground Water Discharge and Construction Permit, UGW390005.
5. The Parties now desire to resolve all alleged violations without additional administrative proceedings except to the extent provided herein by entering into this Agreement. The Parties enter into this Agreement to address all known violations alleged by the Director of the Act, corresponding rules, UPDES Permit number UT0020222 and Ground Water Discharge and Construction Permit No. UGW390005 up to the effective date of this Agreement including those outlined in the attached Administrative Penalty Discussion. Entering into this Agreement does not constitute any admission of liability by Pitman.

ORDER

The Director hereby orders, and Pitman agrees, to the following terms to fully resolve the matter up to the Effective Date of this agreement:

1. Pitman agrees to pay as follows:
 - a. A civil penalty in the amount of \$304,238 (total penalty amount, including the amount to be held in abeyance), \$244,238 of which will be held in abeyance pursuant to paragraph 2, below;
 - b. \$59,000 to be paid the Environmental Mitigation and Response Fund according to Utah Code Section 19-1-603 within 30 days of the Effective Date of this Agreement.
 - c. \$1,000 to be paid to the State of Utah within 30 days of the Effective Date of this Agreement; and
 - d. \$43,552 to be paid to the Division of Water Quality (“Division”) within 30 days of the Effective Date of the Agreement for the Division’s investigative response costs associated with this enforcement action.

Payment is to be made within 30 days of the Effective Date of this Agreement by certified check made payable to the State of Utah delivered or mailed to:

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

2. The Director agrees to hold in abeyance \$244,238 in civil penalties, so long as Pitman completes the following tasks within the timeframes outlined:
 - a. Meets all payment terms outlined above in Item 1 of this Order.
 - b. Ensures that concrete on the San Pitch River, near the Feed Mill property, is fully cleaned up consistent with and in the time frame provided by Utah Division of Water Rights Stream Alteration Permit No. 19-65-0001 (Order of the State Engineer dated April 9, 2019).
 - c. Starts immediate monitoring of process wastewater flowing out of its anaerobic pond for BOD, TSS, TKN, total phosphorus, and oil and grease twice a week for a year. The effluent flow rate from the pond shall be taken with a continuous meter, which must be installed within 30-days of the Effective Date of this Agreement. For BOD₅, TSS and total phosphorus sampling must be either flow proportional composite as stated in the UPDES Permit or utilizing a 24-hour composite sampler. If a composite sampler is used, a sample must be taken every hour during the 24-hour sampling period. TKN and oil and grease must be collected as grab samples. The samples must be analyzed by a state certified lab utilizing methods stated in 40 CFR 136.

- d. Does not violate the Act, corresponding rules, UPDES Permit No. UT0020222 or Ground Water Discharge and Construction Permit, UGW390005 beginning with the Effective Date of this Agreement until April 2021 and at least 18 months after all engineering improvements are fully implemented. If new violations occur, the following penalty amounts will no longer be held in abeyance and will become due and payable to the State of Utah, in addition to any penalties imposed for the new violations:
 - i. \$10,000 per violation per day for discharge violations, including but not limited to UPDES Permit limit exceedances, spills, or overflows.
 - ii. \$500 per occurrence for recordkeeping violations or other violations determined by the Director to be minor.
 - iii. Timely payment in full of the proper portion of the penalty constitutes compliance with the corresponding portion of the Order and does not extend the term of this Agreement.
3. If the Director determines that Pitman has not complied with any of the terms contained in Order paragraphs 1 and 2 above, Pitman shall be required to pay the proper portion of the penalty, as set forth above, within 30 days from the date the Director notifies Pitman of the amounts due. If the Director determines that Pitman violated the Act and requires payment, Pitman may challenge the fact of the violation according to Utah Code 19-1-301 and Utah Admin. Code 305-7 but may not challenge the penalty amounts as provided by this Agreement.
4. If Pitman complies with Order paragraphs 1 and 2, above, it shall be relieved of any further obligation or liability under this Agreement.
5. As of the Effective Date, this Agreement will be a final administrative order subject to the civil enforcement provisions of Utah Code Section 63G-4-501 and other applicable law, including Utah Code Section 19-5-115.
6. Nothing in this Agreement shall limit the power and authority of the Division, Director or the State of Utah to take, direct, or order all actions necessary, including the assessment of civil penalties, in connection with future violations, to protect public health, welfare, or the environment, or to prevent, abate, or minimize an actual, potential, or threatened release of pollutants or contaminants to waters of the State. Further, nothing in this Agreement shall prevent the Director or the Water Quality Board from seeking equitable relief to enforce the terms of this Agreement, from taking other legal or equitable action as they deem appropriate and necessary in connection with future violations, or from requiring Respondent in the future to perform additional activities pursuant to the Act or any other applicable law in connection with future violations.

7. Nothing in this Agreement shall constitute a waiver by Pitman of any claims it may have against third parties for costs, damages, or other actions associated with the release described above.
8. This Agreement shall become effective when it is signed by the Director and Pitman (“Effective Date”).
9. This Agreement is binding upon each of the Parties and their respective heirs, successors, and assigns. Any change in ownership or corporate or legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the parties under this Agreement.
10. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
11. 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 of Utah may have against Respondent, 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.

[SIGNATURE PAGE FOLLOWS]

IT IS SO AGREED AND ORDERED:

FOR UTAH DIVISION OF WATER QUALITY

By _____

Erica Brown Gaddis, PhD

Director

Date: _____

FOR Pitman Family Farms, Inc.

By _____

Title: _____

Date: _____