



State of Utah

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Lieutenant Governor

Department of
Environmental Quality

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Executive Director

DIVISION OF WATER QUALITY
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Director

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MEMORANDUM

TO: Water Quality Board

THROUGH: Walter L. Baker
Director

FROM:  Jennifer Robinson
Environmental Scientist III

DATE: September 7, 2016

SUBJECT: Request for Approval of Settlement Agreement for Norbest, UPDES Permit No. UT0020222

The Utah Water Quality Act, UCA 19-5-104 (3) (h) (i, ii), requires that any Settlement Agreement (SA) negotiated by the Director in excess of \$25,000 must be reviewed and approved or disapproved by the Water Quality Board.

On June 24, June 25, and August 22, 2015, Norbest, formerly known as Moroni Feed Company, overflowed its equalization basin (EQ Basin). These overflows were reported by Norbest to the Division of Water Quality (DWQ) as required by their permit. DWQ subsequently issued a Notice of Violation for these overflows and negotiated the attached SA. The negotiated penalty is \$57,000. Attached for your reference is the proposed SA, I15-03SA.

The terms of the financial settlement in the I15-03SA:

Monetary Penalty paid to DEQ	\$7,000
Mitigation Projects (future)	<u>\$50,000</u>
Total Settlement	\$57,000

The severity of the penalty for I15-03SA is due to the reoccurrence of the violations. On June 11, 2014 an enforcement action was taken against Moroni Feed for overflowing the EQ basin 10 times from April 11, 2014 to April 26, 2014. Moroni Feed also failed to report the overflow to

the DWQ which is a requirement of the permit. The NOV was settled with negotiated settlement of \$37,003. The terms of the financial settlement in the I14-05SA:

Monetary Penalty paid to DEQ	\$2,003
Mitigation Projects (future)	<u>\$35,000</u>
Total Settlement	\$37,003

The public comment period for the proposed SA ran from July 27, 2016 through September 14, 2016 (copy attached). At this time, no comments have been received. If comments are received, then copies of the comments will be provided to the Board at the next Board Meeting.

The proposed SA represents a fair and reasonable settlement. It is Staff's recommendation that this settlement be approved.

Attachments:

1. Settlement Agreement (DWQ-2016-011081)
2. Public Notice (DWQ-2016-011808)

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF MORONI FEED COMPANY 350 SOUTH 300 WEST MORONI, UTAH 84646	DOCKET NUMBER I15-03 SETTLEMENT AGREEMENT
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This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is entered into by and between **MORONI FEED COMPANY** (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 OF VIOLATION AND ORDER**, Docket Number I15-03 (hereinafter 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**, issued to the **OPERATOR** on July 23, 2015, by the **DIRECTOR**. 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. The **OPERATOR** agrees to the following settlement terms:

- A. The **OPERATOR** agrees to pay a penalty in the amount of \$7,000.00 within thirty (30) days of the effective date of this **AGREEMENT** by 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

- B. The **OPERATOR** further agrees to fund the mitigation project(s), in the amount of \$50,000 as a part of the penalty assessment pursuant to *UAC R317-1-8.4*. The mitigation project funds must be utilized no later than three years from the effective date of this **AGREEMENT**, unless the **DIRECTOR** grants an extension in writing. The **OPERATOR** agrees to comply with the following regarding the mitigation project(s):

1. The **OPERATOR** must submit within ninety (90) days of the effective date of this **AGREEMENT** for the **DIRECTOR**'s approval, a project implementation plan for each project that includes a detailed description of the mitigation project, a cost breakdown showing how the funds will be used, and a plan for implementation of the project, which shall include a time frame for implementation and completion of the project and submission of final document(s) indicating completion of the project. The implementation plan should also include a funding schedule which specifies who receives the mitigation funds and when.
2. The **OPERATOR** participation in the mitigation project(s) must fully adhere to *UAC R317-1-8.4*. The **OPERATOR** agrees not to attempt to gain or generate any positive publicity, and further agrees not to deduct or otherwise attempt to obtain a tax benefit from the foregoing funding of the mitigation projects.
3. Once a mitigation project is approved by the **DIRECTOR**, the **OPERATOR** will provide an update on the mitigation project every 90 days.

- C. If the **OPERATOR** fails to fund the mitigation project(s) within the time specified in Paragraph 6.B., or fails to submit the outline(s) as described in Paragraph 6.B. above, or if the mitigation projects will not utilize the full funds allotted, the **OPERATOR** shall remit the remaining unspent funds as per the method and address in Paragraph 6.A. within thirty (30) days of demand to do so by the **DIRECTOR**.

- D. The **OPERATOR** must submit all documentation to the **DIRECTOR** including receipts, once the funds have been spent for the approved mitigation project(s). This information must include who was paid, what the payment was for, and the dates when the payment was made.
- E. In accordance with UAC R317-6-6.15 the **OPERATOR** shall perform a site investigation and possible corrective action after determining the extent of soil and ground water contamination resulting from the wastewater treatment plant equalization basin overflows. The characterization of pollution should include among other things, the concentration, environmental fate and transport, and other significant characteristics of substances present, for both ground water contaminants and any contributing surficial contaminants. This report is due within ninety (90) days of the effective date of this **AGREEMENT**. The R317-6-6.15 contaminant investigation, and any subsequent investigations and corrective action will be included in the Moroni Wastewater Treatment Plant Ground Water Discharge Permit UGW390005 as a compliance schedule item with the appropriately determined dates of completion.
7. The penalty has been determined using the *Penalty Criteria for Civil Settlement Negotiations, Utah Administrative Code ("UAC") R317-1-8* 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.
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 contained herein shall be deemed to constitute a waiver by the **DIRECTOR** to initiate enforcement action for the violations stipulated herein, including the assessment of civil penalties, against Norbest in the event of non-compliance with the terms and conditions of this Consent Order. The **DIRECTOR** is not precluded from taking action in the event of any future non-compliance with the Utah Water Quality Act or regulations.
11. This **AGREEMENT** shall become effective and final on the date signed by the **DIRECTOR**.

AGREED to this _____ day of _____, 2016.

NORBEST, LLC

**UTAH DIVISION of WATER
QUALITY**

By _____
Authorized Agent

By _____
Director



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

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

June 27, 2016

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY

PUBLIC NOTICE OF SETTLEMENT AGREEMENT, DOCKET NO. 115-03SA

PURPOSE OF PUBLIC NOTICE

This notice is to declare that the State of Utah has reached a settlement agreement with Norbest. 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 Norbest.

PUBLIC COMMENTS

Public comments are invited any time prior to close of business September 14, 2016. 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/PublicNotices. If internet access is not available, a copy may be obtained by calling Jennifer Robinson at 801-536-4383. Written public comments can be submitted to: Jennifer Robinson, P.O. Box 144870, Salt Lake City, Utah 84114-4870 or by email at: jenrobinson@utah.gov. The deadline to receive comments is close of business August 29, 2016. After considering public comment the Director of the Division of Water Quality may execute the settlement agreement, revise it, or abandon it.