

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF MORONI FEED COMPANY 350 SOUTH 300 WEST MORONI, UTAH 84646	DOCKET NUMBER I14-05 SETTLEMENT AGREEMENT
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This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is **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**, 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 OF VIOLATION** and **ORDER**, Docket Number **I14-05** (hereinafter the "**NOTICE**"), between the **OPERATOR** and the **DIRECTOR**, issued to the **OPERATOR** on June 11, 2014, 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 \$2,003.00 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

MORONI FEED

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- B. The **OPERATOR** further agrees to fund mitigation projects, in the amount of \$35,000 as a part of the penalty assessment pursuant to *UAC R317-1-9.4*. The mitigation project funds must be utilized by no later than two years from the effective date of this **AGREEMENT**, unless the **DIRECTOR** grants an extension.
1. The **OPERATOR** must submit within ninety (90) days of the effective date of this **AGREEMENT** for the **DIRECTOR** 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 projects must fully adhere to *UAC R317-1-9.4*. 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 projects or fails to submit the outline 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. This information must include who was paid, what the payment was for, and the dates of when the payment was made.

The penalty has been determined using the *Penalty Criteria for Civil Settlement Negotiations, Utah Administrative Code ("UAC") R317-1-9* 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.

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7. Nothing contained in this **AGREEMENT** shall preclude the **DIRECTOR** from taking additional actions to include additional penalties against the **OPERATOR** for permit violations not resolved by this **AGREEMENT**.
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 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** may have against the **OPERATOR**, 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.

AGREED to this ____ day of _____, 2015.

MORONI FEED

**UTAH DIVISION of WATER
QUALITY**

By _____
Authorized Agent

By _____
Director

