



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

SEP 30 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John Dee Hardy, Registered Agent
Tuleview Holsteins, LC
3021 North 2800 West
Brigham City, UT 84302

Re: Administrative Complaint and Notice of
Opportunity for Hearing
Docket No. **CWA-08-2010-0046**

Dear Mr. Hardy:

On April 7, 2009, the United States Environmental Protection Agency, Region 8 (EPA) inspected the Tuleview Holsteins, LC (Tuleview) concentrated animal feeding operation in Brigham City, Utah. The inspection determined that Tuleview violated numerous conditions in its Utah Pollution Discharge Elimination System permit (permit), certification number UTG080028. Those violations were the subject of an administrative order for compliance issued to you on August 26, 2009.

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing (complaint) that EPA is issuing to Tuleview under the authority of § 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). In the complaint, EPA alleges that Tuleview has violated the terms of the permit and § 301 of the Act, 33 U.S.C. § 1311. The violations that EPA is alleging are specifically set out in the complaint. The complaint proposes that a penalty of \$50,400.00 be assessed against Tuleview for these violations.

By law, Tuleview has the right to request a hearing regarding the violations alleged in the complaint and the appropriateness of the proposed administrative civil penalty. Please pay particular attention to the section of the complaint entitled "Notice of Opportunity to Request a Hearing." If Tuleview wishes to request a hearing, it must file within thirty (30) days of receipt of the enclosed complaint, a written answer with the EPA Regional Hearing Clerk at the address set forth in the complaint. The written request must follow the requirements of the Consolidated Rules of Practice at 40 C.F.R. part 22, a copy of which is enclosed. Note that should Tuleview fail to request a hearing within thirty (30) days of receipt of the complaint, the right to such a hearing will be waived and the proposed civil penalty may be assessed against Tuleview without further proceedings.



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If Tuleview wishes to settle this matter without further legal action, it may waive the right to a hearing and, within thirty days of receipt of this letter, pay the proposed penalty to "Treasurer, United States of America," at the address set forth in the complaint.

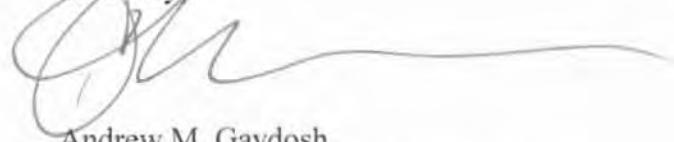
Enclosed is a copy of "U.S. EPA Small Business Resources," which can assist in complying with federal environmental laws. Also enclosed is an SEC Disclosure Notice.

Whether or not Tuleview requests a hearing, it may confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference. If such a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a consent agreement signed by Tuleview and the delegated official in EPA Region 8. The issuance of such a consent agreement shall constitute a waiver by Tuleview of its right to a hearing on, and to a judicial appeal of, the agreed upon civil penalty. A request for an informal conference with EPA does not extend the thirty day period within which Tuleview must request or waive the right to a hearing, and the two procedures can be pursued simultaneously.

Tuleview has the right to be represented by an attorney at any stage in the proceedings, including any informal discussions with EPA, but it is not required. If Tuleview wishes to discuss settlement or technical questions, please contact Seth Draper, Environmental Scientist, at (303) 312-6763. Legal questions, including any communications from an attorney, should be directed to Wendy Silver, Senior Attorney, at (303) 312-6637.

We urge your prompt attention to this matter.

Sincerely,



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Enclosures:

1. Administrative Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Civil Practice (40 C.F.R. part 22)
3. U.S. EPA Small Business Resources Information Sheet
4. SEC Disclosure Notice

cc: Amanda Smith, Utah Department of Environmental Quality

8. EPA has issued comprehensive regulations that implement the NPDES program. Regulations pertaining to CAFOs are codified at 40 C.F.R. § 122.23.
9. 40 C.F.R. § 122.23(d) requires the owner or operator of a CAFO to seek coverage under an NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, or maintained such that a discharge will occur.
10. On October 1, 2000, the State of Utah lawfully issued a general permit for CAFOs, the Utah Pollutant Discharge Elimination System (UPDES) Concentrated Animal Feeding Operation General Permit #UTG80000 (the permit). The permit has since been administratively extended.
11. The permit prohibits discharges from the manure management facilities of a CAFO except in the event of a 25-year 24-hour storm event, and then only if the CAFO is meeting the provisions and conditions of the permit.
12. Part I.A.11. of the permit defines “process wastewater” as any process-generated wastewater and any precipitation (rain or snow) which comes into contact with any manure, litter, or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animal or poultry or direct products.
13. Part I.F.1. of the permit states, in part, that there shall be no discharge of process wastewater or solid or liquid manure except when chronic or catastrophic rainfall events cause an overflow of process wastewater.
14. Part II.B. of the permit requires, in part, that the permittee make immediate oral notification within 24 hours to the Division of Water Quality of the Utah Department of Environmental Quality (UDEQ) of a discharge to waters of the State. The permittee is further required to notify the Executive Secretary of UDEQ in writing within 5 working days of the discharge.
15. Part III.B.1. of the permit requires each owner/operator of a CAFO covered by the permit to develop, implement, and keep on site a site-specific comprehensive nutrient management plan (CNMP) containing the following components, as applicable: manure and wastewater handling and storage; land application of manure; land management practices; feed management; record keeping; and other utilization options. At a minimum, the CNMP must include best management practices (BMPs) to address operational and maintenance activities in accordance with current state regulations and Natural Resources Conservation Service (NRCS) practice standards.
16. Part III.B.2. of the permit requires the CAFO to develop and implement the CNMP within 3 years of permit coverage unless otherwise notified by the Executive Secretary of UDEQ.

17. Part III.B.3. of the permit requires the owner/operator of the CAFO to sign certification A of Addendum C of the permit, which specifies that the CNMP has been reviewed by an eligible specialist who has been trained to review and prepare a CNMP.
18. Pursuant to Part III.B.5.c. of the permit, the BMPs included in the facility's CNMP must include containment structures to store the 25-year, 24-hour storm event, plus all other process wastewater and liquid and solid manure.
19. NRCS Conservation Practice Standard for Utah, Code 359, for waste treatment lagoons, requires that the minimum elevation of the top of the settled embankment of the lagoon shall be one (1) foot above the lagoon's required volume.
20. NRCS Conservation Practice Standard for Utah, Code 316, sets forth the accepted practice for animal carcass treatment or disposal as a component of a waste management system for livestock operations.
21. Part IV.A. Table 1 of the permit requires that freeboard of a lagoon or storage structure be reported as feet below the emergency overflow level.
22. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of a Class II civil penalty of up to \$11,000.00 per violation of § 301 of the Act, 33 U.S.C. § 1311, and per violation of any condition or limitation in a permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342, up to a maximum for all violations of \$157,500.00, for violations occurring from March 15, 2004, through January 12, 2009, and up to \$16,000.00 per violation, up to a maximum for all violations of \$177,500.00, for violations occurring after January 12, 2009.

GENERAL ALLEGATIONS

23. All general allegations set forth in this complaint are specifically incorporated into each count by this reference.
24. Tuleview Holsteins, LC (Tuleview or respondent) is and was at all relevant times a Utah limited liability corporation having a registered office address of 3021 North 2800 West, Brigham City, Utah.
25. Respondent is a "person" within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5).
26. Respondent owns and/or operates a CAFO as that term is defined in 40 C.F.R. § 122.23(b)(2), located at 3021 North 2800 West, Brigham City, Utah (the facility).
27. The facility is a "point source" within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14).

28. Respondent obtained coverage under the permit from UDEQ on September 17, 2001, certification number UTG080028.
29. The facility is located adjacent to an unnamed slough (wetland), which drains to and abuts a tributary to the Bear River. The facility is also located adjacent to the Hammond West Branch Canal.
30. The wetland, tributary, Hammond West Branch Canal, and Bear River are each a “water of the United States” within the meaning of 40 C.F.R. § 122.2 and, therefore, navigable waters within the meaning of § 502(7) of the Act, 33 U.S.C. § 1362(7).
31. The wetland, tributary, Hammond West Branch Canal, and Bear River are each a water of the State within the meaning of Utah Administrative Code R317-1-1.32.
32. On April 7, 2009, inspectors from EPA and UDEQ conducted an inspection of the facility and observed the following:
- a. In February or March 2008, as the result of a power failure, the facility discharged process water for seven days from the sump area to the slough, in violation of Parts I.F.1. and V.B. of the permit. Further, the facility failed to report the discharge to UDEQ, in violation of Part II.B. of the permit.
 - b. The facility’s CNMP did not meet the requirements set forth in Parts III.B.1. and III.B.2. of the Permit, and was not certified, in violation of Part III.B.3. of the permit. The facility’s CNMP did not include BMPs to address mortality management in accordance with NRCS Conservation Practice Standard for Utah, Code 316, in violation of Part III.B.1. of the permit, and did not contain BMPs for wastewater containment.
 - c. The freeboard at the evaporation pond (lagoon) did not meet the one foot requirement set forth in NRCS Conservation Practice Standard for Utah, Code 359, and the pond was insufficient to contain the 25-year, 24-hour storm event, plus all other process wastewater and liquid and solid manure, in violation of Part III.B.5.c. of the Permit. In addition, the facility did not report the freeboard as feet below the emergency overflow level, in violation of Part IV.A. Table 1 of the permit.
 - d. The facility did not sample land application soils on annual crops and alfalfa in accordance with section 6.6 of the CNMP, in violation of Part IV.A. Table 1 of the permit.
 - e. The facility did not sample manure and wastewater annually, in violation of Part IV.A. Table 1 of the permit.

- f. The facility did not comply with the inspection and monitoring requirements for land application activities set forth in Part IV.A. Table 1 of the permit and the CNMP.

33. Process wastewater, manure, and feed mixed with snow are each a “pollutant” within the meaning of § 502(6) of the Act, 33 U.S.C. § 1362(6).

34. The storm water discharge from the facility is the “discharge of a pollutant” as defined in § 502(12) of the Act, 33 U.S.C. § 1362(12).

35. Pursuant to § 309(g) of the Act, 33 U.S.C. § 1319(g), EPA has consulted with Amanda Smith, Executive Director, UDEQ, regarding assessment of this administrative penalty by furnishing a copy of this complaint and inviting her to comment on behalf of the State of Utah.

COUNT I

36. As described in paragraph 32.a., above, respondent discharged pollutants from the facility to waters of the United States and to waters of the State.

37. Respondent’s discharges to waters of the United States and to waters of the State constitute violations of the permit and § 301 of the Act, 33 U.S.C. § 1311.

COUNT II

38. As described in paragraph 32.a., above, respondent failed to report to UDEQ the discharge of pollutants from the facility to waters of the State.

39. Respondent’s failure to report to UDEQ the discharge of pollutants from the facility to waters of the State constitutes a violation of the permit and, therefore, of § 301 the Act, 33 U.S.C. §1311.

COUNT III

40. As described in paragraph 32.b., above, respondent failed to prepare a CNMP containing all of the components required by the permit, and failed to have the CNMP certified by an eligible specialist.

41. Respondent’s failure to prepare a CNMP in compliance with the requirements of the permit constitutes a violation of the permit and, therefore, of § 301 the Act, 33 U.S.C. § 1311.

COUNT IV

42. As described in paragraph 32.c., above, at the time of EPA's inspection on April 7, 2009, respondent had failed to implement BMPs sufficient to store the 25-year, 24-hour storm event, plus all other process wastewater and liquid and solid manure.

43. Respondent's failure to implement BMPs as required by the permit constitutes a violation of the permit and therefore of § 301 of the Act, 33 U.S.C. § 1311.

COUNT V

44. As described in paragraph 32.d.- e., above, respondent failed to conduct sampling as required by the permit.

45. Respondent's failure to conduct sampling as required by the permit constitutes a violation of the permit and, therefore, of § 301 of the Act, 33 U.S.C. § 1311.

COUNT VI

46. As described in paragraph 32.f., above, respondent failed to conduct inspections and monitoring as required by the permit.

47. Respondent's failure to conduct inspections and monitoring as required by the permit constitutes a violation of the permit and, therefore, of § 301 of the Act, 33 U.S.C. § 1311.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

48. Based on the foregoing allegations and pursuant to the authority of § 309(g) of the Act, 33 U.S.C. §1319(g), EPA Region 8 hereby proposes that a penalty of \$50,400.00 be assessed against respondent for the violations alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

During the inspection in April 2009, respondent stated that it had previously discharged process wastewater from the facility to the slough for seven days. That discharge, as well as the others observed by the inspectors, could have been prevented had respondent complied with the permit.

EPA has found that the major environmental problem associated with CAFOs is the large volume of animal waste generated in concentrated areas. When manure and wastewater are not properly managed, pollutants can be released into the environment. Discharges from CAFOs can transport nutrients such as nitrogen and phosphorus, as well as other pollutants such as bacteria,

pesticides, antibiotics, hormones, and trace elements including metals to local waterways. Impacts on ecosystem and human health include contamination of public drinking water sources and private well water, fish kills and advisories, and beach closings. The estimated 500 tons of manure discharged each year from large agricultural operations are one of the leading causes of water quality impairment.

EPA and states with authorized NPDES programs rely on permits to implement the controls needed to prevent water pollution. Non-compliance with the terms of a CAFO permit jeopardizes the integrity of EPA's and UDEQ's storm water pollution control programs.

Prior Compliance History

On March 8, 2006, UDEQ conducted a routine compliance inspection of the facility and found that the lagoon appeared to have insufficient capacity. By letter dated March 9, 2006, UDEQ recommended to respondent that a second lagoon be constructed. Following another inspection on April 10, 2008, UDEQ issued a warning letter to respondent noting the following deficiencies, among others: 1) a pump failure or power outage could result in overflow of wastewater from the facility's sump to the slough, 2) the berm surrounding the facility on the low end might not be of sufficient height to contain pen and feed runoff, 3) the facility lacked an adequate emergency response plan, which should be included in the CNMP, and 4) the pond appeared to have insufficient storage capacity and less than one foot of freeboard.

Degree of Culpability

Respondent had a copy of the permit and should have been aware of all of the requirements therein. During the inspections by UDEQ and EPA, respondent was provided with information on compliance concerns and permit requirements. Nevertheless, violations continued at the facility.

Economic Benefit

Respondent enjoyed an economic benefit from its failure to comply with the requirements of the permit. Specifically, respondent avoided costs associated with installing and maintaining BMPs, conducting inspections, and developing a complete CNMP.

Ability to Pay

The proposed penalty was not reduced based upon the statutory factor of an inability to pay. However, EPA will consider any information that respondent may present regarding their inability to pay the penalty proposed in this complaint.

Other Matters That Justice May Require

At this time, EPA has not made any adjustment to the proposed penalty based on this statutory factor.

49. As required by § 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), prior to assessing a civil penalty, EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

50. EPA may issue the Final Order Assessing Administrative Penalties thirty days after respondent's receipt of this Notice, unless respondent, within that time, requests a hearing on this Notice pursuant to the following section.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

51. As provided in § 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.15(c), respondent has the right to request a hearing in this matter. If respondent (1) contests any material fact upon which the complaint is based, (2) contends that the amount of penalty proposed in the complaint is inappropriate, or (3) contends that it is entitled to judgment as a matter of law, it must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty days after service of the complaint.

52. Respondent's answer must (1) clearly admit, deny, or explain each of the factual allegations contained in the complaint, (2) state the circumstances or arguments which are alleged to constitute grounds of defense, (3) state the facts intended to be placed at issue, (4) state the basis for opposing any proposed relief, and (5) specifically request a hearing, if desired. 40 C.F.R. § 22.15(b). Failure to admit, deny, or explain any factual allegation contained in the complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(c).

53. Respondent's answer, an original and one copy, must be filed with:

Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

A copy of the answer and all other documents filed in this action must be served on:

Wendy Silver
Senior Attorney
U.S. EPA, Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

54. Be aware that should respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under § 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment.

IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE THE RIGHT TO CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE FULL PENALTY PROPOSED IN THE COMPLAINT.

55. Should respondent not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional 30 days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

TERMS OF PAYMENT FOR QUICK RESOLUTION

56. If respondent does not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this complaint, no answer need be filed. For more time for payment, respondent may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the complaint, then pay the money within sixty (60) days of such receipt. Penalty payment must be made by certified or cashier's check payable to "Treasurer, the United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Copies of the check shall be sent to:

Seth Draper
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202-1129

and

Wendy Silver
U.S. Environmental Protection Agency (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

57. Payment of the penalty in this manner shall constitute consent by respondent to the assessment of the proposed penalty and a waiver of respondent's right to a hearing in this matter.

58. Neither assessment nor payment of an administrative civil penalty pursuant to § 309 of the Act, 33 U.S.C. § 1319, shall affect respondent's continuing obligation to comply with the Clean Water Act or any other federal, state, or local law or regulations and any separate compliance order issued under § 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

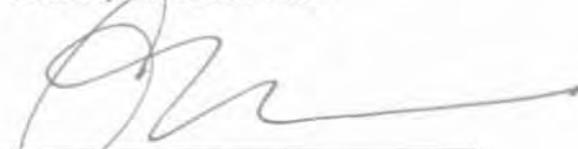
SETTLEMENT CONFERENCE

59. EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms will be expressed in a written consent agreement signed by the parties and incorporated into a final order signed by the Regional Judicial Officer. 40 C.F.R. § 22.18. To explore the possibility of settlement in this matter, contact Wendy Silver, Senior Attorney, at the address below. Ms. Silver can also be reached at (303) 312-6637.

United States Environmental Protection Agency, Region 8
Office of Enforcement, Compliance, and
Environmental Justice, Complainant.
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 9/30/2010

By:



Andrew M. Gaydosh
Assistant Regional Administrator

In the Matter of: Tuleview Holsteins, LC

Date: 9/30/10

By: Wendy I. Silver
Wendy I. Silver, Senior Attorney
Legal Enforcement Program

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, to:

John Dee Hardy, Registered Agent
Tuleview Holsteins, LC
3021 North 2800 West
Brigham City, UT 84302

Certified Return Receipt No. 7009 3410 0000 2592 4576

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

Amanda Smith, Executive Director
Utah Department of Environmental Quality
195 North 1950 West
P.O. Box 144810
Salt Lake City, UT 84114-4810

Certified Return Receipt No. 7009 3410 0000 2591 9442

The original and one copy were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 9/30/10 Sam Maxwell