

ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR, ENERGY FUELS RESOURCES (USA) INC. – RIM MINE SETTLEMENT AGREEMENT DOCKET NO. I12-04

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-9*).

Statutory Maximum of \$10,000/violation/day for 1 violation for 4 days = \$40,000.00

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance;
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1) the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator;
- 6) good faith efforts of the violator;
- 7) ability of the violator to pay; and
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.
- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and

- Good faith efforts to comply.

Adjustments to the civil penalty include:

- The economic benefit gained as a result of non-compliance,
- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

PENALTY - The penalty for ENERGY FUELS RESOURCES (USA) INC. – RIM MINE has been calculated as follows:

Gravity Component:

The gravity component of the penalty is based on violations noted in the notice of violation and order.

1. *40 CFR 440.32 for a discharge which caused a categorical standard to be violated (Dissolved Radium 226).*
2. *UAC R317-8-7.1(1)(a) for not complying with all conditions of UPDES permit #UT0023922.*
3. *Part I.D of UPDES permit #UT0023922, for failure to comply with effluent limits.*
4. *UAC R317-2-7.1 for discharging substances that may interfere with water's designated uses, or to cause any of the applicable standards to be violated.*

Energy Fuel Resources (EFR) responded to the notice of violation. This is a summary of their response: As a result of the noncompliance dissolved radium 226 data received during 2012, EFR initiated a review of the data and an investigation into sample collection procedures, laboratory analysis methods and procedures and results reported for the mine. Several items were noted during the data review including:

- The total radium 226 results have never exceeded the permit limits.
- The dissolved radium 226 results exceed the total radium 226 results in 26 of 45 samples since 2008.

Typically a dissolved radium 226 analysis of a water sample is performed by removing the particulates with a filter, then analyzing the filtered water for radium 226. Total radium 226 results must always be greater than or equal to dissolved radium 226 results, since dissolved radium 226 is a subset of total radium 226. The discrepancy of the dissolved radium 226 results being greater than the total radium 226 results is indicative of errors in data reporting or sample handling, since total radium 226 analysis for water samples include the radium 226 content both dissolved in the water and present in the particulates in the water.

EFR investigated the sample collection procedures, laboratory methods, and filtration methods for the dissolved radium 226. Several items were noted during the investigation including:

- All of the dissolved radium 226 samples were filtered by the laboratory using re-usable filtration apparatus. The laboratory preserves the dissolved radium 226 samples after filtration. No filtration blanks were performed by the laboratory.
- Several radiochemistry experts were contacted by EFR, and they were in agreement that the total analysis must always be greater or equal to the dissolved fraction. The radiochemistry experts noted that the total results are reliable, and the error lies within the dissolved results. The results indicate that the additional filtration step by the laboratory is most likely the cause of the erroneous high dissolved results due to contamination.

Based on the response to the notice of violation, DWQ believes that the violations noted in the notice of violation were caused by laboratory error and not by numerical permit limit violations. Even though the dissolved radium 226 results did not violate the numeric permit limit, the discrepancy of dissolved radium 226 results being greater than the total radium 226 results should have been noticed and corrected.

The gravity component of the penalty is based on violations:

- Not properly gathering and evaluating the information submitted to DWQ on the discharge monitoring reports, as stated in the certification statement on the discharge monitoring reports.

VIOLATION: EFR reported violations for dissolved radium 226, four times during 2012. It was determined that the violations were due to laboratory error. EFR should have been evaluating the analytical results that were received from the laboratory. Evaluating the analytical results on a continuous basis would have highlighted analytical discrepancies.

The violation is classified as a Category D violations for:

- Failure to evaluate the analytical results on a continuous basis and to highlight the analytical discrepancies and correct the problem.

The reporting violation occurred 4 times during 2012. Percent credit was based on the following: 50% credit was given for the history of compliance, for not having many previous reporting violations at this facility, 75% credit was given for good faith efforts on the response time to investigate the results discrepancy, and replacing the laboratory used for the analysis. 0% credit was given for degree of negligence. The penalty will be calculated at 1 violation at the Category D for 4 days. Total penalty for the violation is \$1,167.00.

Efforts made by ENERGY FUELS RESOURCES (USA) INC. – RIM MINE to prevent any recurrence of this incident include:

- EFR will be utilizing a new laboratory for the analysis of dissolved radium 226
- Split samples will be collected and sent to several laboratories to verify the analytical results.
- Sample collection activities will be review and modified as necessary.
- Field sample collection activities will include field filtration.

Economic Benefit Justification:

Economic benefit received for ENERGY FUELS RESOURCES (USA) INC. – RIM MINE was determined on April 11, 2013 that a calculation was not warranted since the violation was a reporting violation, and no economic benefit was derived from the non-compliance.