

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,  
ST GEORGE CITY SETTLEMENT AGREEMENT DOCKET NO. M10-02**

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*).

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;
- 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 FACILITY has been calculated as follows:

**Gravity Component:**

The gravity component of the penalty is based on the following violations.

On November 17, 2009 Utah Division of Water Quality (DWQ) personnel were auditing the St. George City's (SGC) Municipal Separate Storm Sewer System (MS4) program when they were shown where the cleanings from the storm water sewer are dewatered and disposed of. The debris and fluid is disposed of in an unlined pit on property controlled by the city. The pit was located in an area behind the St. George Municipal Wastewater Reclamation Facility (SGWRF). The pit is excavated approximately 30 feet long, 4 feet wide, and as deep as the excavation equipment was capable. At this time, the sanitary sewer collections system had been utilizing this same disposal method for untreated wastewater collected from the wastewater Collection System. The method was still in use in December when DWQ returned to the site.

Information submitted by St. George in response to the NOV, this method of disposal has been used since 1991. In 2005 the SGWRF stopped the practice and started transferring the grit and screenings from the headwork's to a permitted landfill. SGWRF mentioned that during this time there were plans to build drying beds at the facility, but the plans were continuously delayed. These drying beds could have been used to dewater the cleanings and allow them to be disposed of at the landfill. St. George City indicated that starting the day after they were told to stop disposing of waste in this method they started dumping the waste on the concrete pad where they have septic haulers unload. In this way they could dewater the solids and the drain the liquid back to the headworks. The solids could be collected and sent to the landfill with other removed waste. Drying beds were finally completed and began operation in February of 2010.

St George also provided information showing that they dumped on a regular basis. St George indicated that they preformed cleanings on a weekly schedule, and only needed to dispose of loads once a week. They also would do a monthly cleaning of city owned interceptors. This would add one additional dumping each month. That comes to sixty four days in a year. It was also agreed that it should be allowed that each month, one unexpected dumping should be added to account for the non planned events. The DWQ proceeded to calculate the penalty on the basis of each day the dumping happened was a violation for a total of seventy six violations for the year before the violations were identified and stopped.

Due to the similarities between Violation 1 and Violation 2, they will be combined into one violation for calculating a penalty associated with them.

- VIOLATION 1            DISPOSAL OF WASTE MATERIAL AND DEBRIS IN A WAY THAT MIGHT  
                                 DEGRADE GROUND WATER**
- VIOLATION 2            DISPOSING OF WASTE MATERIAL AND DEBRIS**

Utah Code Ann. § 19-5-107(1)(a). Disposing of screenings, grit, storm water and sanitary sewer collection system cleanings at the facility on a site as described in Findings of Fact Sections of the NOV. At the disposal locations, there was no effort made to collect any wastewater from the material, nor was there any effort to prevent any water from coming into contact with the waste material. As a result the, contaminated water was allowed to leave the disposal area and could have communicated pollutants to the ground water in the area. The subsequent reburial of the debris after the pits were "filled" allowed for the potential of groundwater to contact the debris and further transfer pollutants to groundwater.

Utah Administrative Code § R-317-6-6.1.A of the Ground Water Quality Protection Rules for constructing the disposal pits as described in Findings of Fact Sections 1 through 5, without first acquiring a permit or complying with Utah Administrative Code § R-317-6-6.2.A.1. The disposal practice used for the debris and material was never

permitted for use by Executive Secretary /Director of the Division of Water Quality. Nor was their any effort to prove it complied with Utah Administrative Code and would not require being permitted. Observations and discussions of the practice indicate the pits were used in a way that benefited from the fact that the pits were not constructed to contain water, or retain it from entering the ground.

### **VIOLATION 3           DISPOSING OF WASTE MATERIAL AND DEBRIS IN A WAY CONTRARY TO THEIR UPDES PERMIT**

UPDES Permit #UT 0024686 Part VI, F “Removed Substances” for disposal of removed substances as stated in the Findings of Fact Sections 1 through 5. The UPDES Permit dictates that any debris removed from wastewater flow during treatment must be disposed of in a way that will prevent pollution from entering any waters of the State. The UPDES Permit controls the disposal method for removed substances that were generated during the treatment of the wastewater in an effort to prevent the recontamination of waters of the State by those removed substances. The practice of disposal by the SGWRF was stopped in 2005.

The practice was stopped before the November 17, 2008 start for the scope of this SA, no Gravity Component will be calculated for this item.

### **CRITERIA ADJUSTMENTS TO THE PENALTY**

The Violator has a good history of compliance with the DWQ. The Violator will receive 90% credit for history of compliance.

It appears that the Violator was not aware of the violation until they were first made aware of it in 2005 when SGWRF halted the practice. From this point on, there was no apparent effort to come into compliance until DWQ inspected the site, and became aware of the violation. Due to the said considerations, the Violator will only receive 60% credit for the degree of willfulness or negligence for violations 1 and 2.

The Violator has made an exemplary effort to comply with the NOV and eliminate the violation, but for the most part it wasn't until the DWQ became aware of it. The Violator will be given 90% credit for good faith efforts to comply for all violations.

### **Economic Benefit Justification:**

Economic benefit received for VIOLATOR was calculated based on; 1. capital investment delayed; 2. delayed expenditures, and; 3. expenses not incurred. Avoided and delayed expenses are based on a survey of current construction, engineering and product costs. The field entries for the Environmental Protection Agency BEN model have been used in previous storm water calculations.

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| Capital Investment: | This part of the calculation includes pollution items that were not bought to avoid the discharge such as silt fencing, gravel socks, etc. |
| Expenditures:       | This part of the calculation includes costs of items such as inspections, monitoring, and record keeping set up that were delayed.         |
| O & M Costs:        | Avoided operation and maintenance costs were used in the economic benefit calculation.   |

The economic benefit calculation was done with the current BEN programs provided by the Environmental Protection Agency. A copy of the BEN calculations is attached to the calculations portion of the document. The calculation was based on the delayed costs for constructing the drying beds to handle the sewer cleanings. The cost of construction for the drying beds is being handled as a delayed cost. The cost of operating and maintaining them is being handled as an avoided cost. The cost of constructing and implementing the drying beds comes from the report of the installation as reported in the Response to the NOV. This comes to \$35,100.50 to build the drying bed.

The BEN calculation was based on the fact that if St. George had constructed the drying beds in 2005, the violations would have been avoided. The date of noncompliance, February 26, 2005, is five years from the date the drying beds were constructed and put into use and is consistent with EPA's policy of not going back more than 5 years from the date of noncompliance for economic benefit calculations. The date of compliance is February 26, 2010. A capitol investment of \$35,100 was used. As a simplifying assumption, no operation and maintenance costs were assumed during the period of non-compliance. It is assumed that the city already owned the land the drying beds were constructed on. The resulting BEN is \$14,595.