

**ADMINISTRATIVE PENALTY DISCUSSION FOR TESORO and SALT LAKE CITY,  
STIPULATED COMPLIANCE ORDER, DOCKET NO. SAI15-01, SAI15-02**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-8*).

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**

Category A - \$7,000 to \$10,000 per day.

Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.
2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - \$2,000 to \$7,000 per day.

Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.
2. Creation of a serious hazard to public health or the environment.
3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.
4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - \$500 to \$2,000 per day.

Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.
2. Substantial non-compliance with the requirements of a compliance schedule.
3. Substantial non-compliance with monitoring and reporting requirements.
4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.
5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to \$500 per day.

Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.
2. Minor violations of compliance schedule requirements.
3. Minor violations of reporting requirements.
4. Illegal discharges not covered in Categories A, B and C.
5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

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.

PENALTY - The penalty for Tesoro and Salt Lake City has been calculated as follows:

**Gravity Component:**

The gravity component of the penalty is based on violations of the Utah Clean Water Act.

On January 30, 2015, a work crew from Salt Lake City (SLC) was onsite at Rosewood Park retrieving equipment used during the repair of the water line that feeds the park from the east side. The crew had completed the work the day before, but needed to retrieve the heavy equipment and check on the work.

The SLC crew discovered a new water leak and a fuel odor at approximately 0830 MDT on January 30, 2015, SLC notified Tesoro Logistics Operations LLC (Tesoro) of the fuel odor at the site of the drinking water line repair near Rosewood Park. Tesoro mobilized a crew to the area to confirm the release location. Tesoro confirmed the location, and began emergency procedures. The Tesoro lines in the area were shut down, the site was cordoned off, recovery actions were started, and notifications were made by Tesoro to the following: the National Response Center (NRC), EnviroCare, Bio West (wildlife evaluation), Kleinfelder (monitoring and soil cleanup), Salt Lake City Fire Department, and Utah Department of Environmental Quality (DEQ) which in turn contacted Division of Water Quality (DWQ) and Salt Lake County Health. Tesoro was already in contact with and working with SLC.

The surfaced product (distillate) and drinking water mixture collected on the ground surface in the south East corner of the park near a storm water surface grate. The mixture made it through the storm drains to the North West Oil Drain Canal (NWOD) and passed sorbent booms that SLC maintains at the inlet to the NWOD to reduce sheening from road runoff during rain events.

Due to the presence of the hydrocarbon, Tesoro took the lead on the cleanup. Tesoro deployed field teams to assess the extent of the release in the storm drains, NWOD, Jordan River, City Drain Canal (City Drain) and beyond. The teams verified that the product traveled down the storm drains to the NWOD, and that sheen was observable at the inlet of the NWOD.

Tesoro immediately mobilized response and cleanup resources to the area to contain and stop the release, and initiate the cleanup and recovery process. Along the NWOD Tesoro deployed lengths of containment booms in a way to direct surface material to a point along the side of the NWOD where it could be collected and prevent migration beyond that point. This was done at the inlet into the NWOD and at a station north from the inlet but upstream from the canal lift pumps. **TESORO** also deployed lengths of sorbent boom to absorb and remove sheen. This was done at the inlet to the NWOD, at two stations north from the inlet of the NWOD but upstream from the canal lift pumps, just downstream at the canal lift pumps, and at the syphon where the NWOD goes under the Jordan River

Water Sampling commenced on January 30, 2015 by both Kleinfelder and Water Quality. Water samples were taken on the following days along the NWOD; January 30<sup>th</sup> and 31<sup>st</sup>, February 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup>. These days include events on Feb. 3<sup>rd</sup> and 5<sup>th</sup> that had the potential to flush or mobilize release-related constituents to the NWOD. Results from all water Quality sampling have previously been provided to SLC and Tesoro.

Tesoro's follow-up response actions included cutting out the compromised sections of pipeline, which were replaced, tested and returned to service by the evening of January 31st. SLC's follow-up response actions included jetting the storm drain impacted to remove residuals with clean out completed by February 5th. Bio West surveyed the NWOD twice daily through February 6th to identify any wildlife that might have been impacted by the release. No wildlife impacts were identified.

Tesoro's soil cleanup actions began on February 5<sup>th</sup> and included delineating the impacted area, removing surface soil and sod, started soil and groundwater sampling. Soil removal and confirmation samples were completed with site ready for backfill and restoration by February 25th when Water Quality Groundwater Protection issued a verbal "No Further Action"(NFA) decision at a meeting at Water Quality. At that same meeting Water Quality concurred with the request that Tesoro be allowed to demobilize staged resources from the NWOD and park, thus allowing them to return equipment to storage and regular use, and turn their efforts toward park restoration. Water Quality followed up with a signed NFA letter on March 2nd.

Tesoro and SLC responded to the incident immediately, and have restored the park and area to a condition better than before the release. Upon notification of the release, all efforts were taken to stop the release and contain the impact. When taken into consideration, Tesoro and SLC will be given 95% credit for "good faith efforts to comply" in the penalty calculation.

The release was the result of a failure in both lines where they crossed each other. Currently the Division can't attribute fault for the release to one line over the other. If the release is the direct result of an interaction between the lines, it can't be definitively connected to one line or the other. Tesoro and SLC will be given 90% credit for "degree of negligence" in the penalty calculation.

There have been minor events involving both Tesoro and SLC over the years, it has not been shown that they have attempted to evade compliance and willfully violate. Both entities have a history of working to

comply with the law. Tesoro and SLC will be given 90% credit for "history of compliance or non-compliance" in the penalty calculation.

**VIOLATION 1**, Utah Code Ann. § 19-5-107(1)(a), for the unpermitted release of a "pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or placing or causing to be placed any wastes in a location where there is probable cause to believe that it will cause pollution.", as described in Findings paragraph's 1 through 3 of the Compliance Order.

**VIOLATION 2**, Utah Administrative Code R317-2-7.2, for discharging a waste in such a way that waters of the state will be or may become "...offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures." as described in Findings paragraph's 1 through 3 of the Compliance Order.

The two violations are being combined into one violation for calculating purposes due to the similar nature of the violations.

Typically, this type of violation is classified as a Category C, with it being elevated to a B, or downgraded to a D depending on the potential impact of the release on human health and the environment. After evaluating the facts of the release; toxicity of the product released, the proximity of the release to homes, and the potential to impact human health, it has been determined that the incident warrants being elevated to a Category B for the first day of the incident

However, for the majority of the cleanup/response period the source had been isolated from the storm drain and impact was from the residual in the storm drain while it was being cleaned and returned to service. After the first day of release, with no source activity the violation does warrant being reduced from a Category B violation to C.

The release occurred on January 30<sup>th</sup> in the morning and was secured by midday. The incident was considered ongoing until the storm line was cleaned on February 5<sup>th</sup>. This totals seven days of violations. The first day will be calculated as category B, the other 6 days are Category C.

The statutory max penalty for these violations is \$70,000.00. Using the above parameters the penalty comes to \$6,167.00. The penalty amount of \$6,167.00 is being assessed to both parties involved in the release on an equal basis, and Tesoro's share comes to \$3,083.50.

As per the fee schedule approved by the Legislature, DWQ may recover administrative costs associated with water quality clean up activities that include emergency response to spills and site investigation. Also specified in the fee schedule, analytical costs may be recovered at the actual cost. Records show that the state incurred \$20,165.00 in lab costs which was invoiced and paid in March of this year by Tesoro. The state also incurred 98 hours of labor which is billed at the approved rate of \$90 per hour and totals \$8,820.00. This will also be split equally between the parties involved, and Tesoro's share comes to \$4,410.00.

**UPDES PENALTY CALCULATION SHEET**

<b>LEGAL NAME AND MAILING ADDRESS OF OPERATOR</b>		<b>UPDES Permit Number</b>			<b>FACILITY DESCRIPTION / CONTACT NAMES</b>			
		Date of Analysis			Name of Site Contact:			
		Site Name:			Name of Authorized Official:			
		NOV/SA Docket No.			Telephone Number			
		DEQ Analyst Name			Daniel Griffin			
<b>PERMIT COVERAGE</b>	<b>Category of Violation Enter Max \$ Per Day</b>	<b>Credit for Degree of Negligence</b>	<b>Credit for History of Compliance</b>	<b>Credit for Good Faith Efforts</b>	<b>Total Penalty Per Day</b>	<b>No. of Violation Days</b>	<b>Dollar Amount</b>	<b>Total</b>
<b>Category A</b>	\$7,000-\$10,000	90%	90%	95%	\$7,250	0	\$0	\$0
	Reduction	-\$900	-\$900	-\$950				
<b>Category B</b>	\$2,000-\$7,000	90%	90%	95%	\$2,417	1	\$2,417	\$2,417
	Reduction	-\$1,500	-\$1,500	-\$1,583				
<b>Category C</b>	\$500-\$2,000	90%	90%	95%	\$625	6	\$3,750	\$3,750
	Reduction	-\$450	-\$450	-\$475				
<b>Category D</b>	\$0-\$500	90%	90%	95%	\$42	0	\$0	\$0
	Reduction	-\$150	-\$150	-\$158				
							<b>Total Gravity:</b>	<b>\$6,167</b>
<b>Economic Benefit</b>	Enter Capital Investment Cost (Delayed Capitol)	Enter Expenditures (Delayed)	Enter Annual O & M Costs (Avoided)	Enter Date Noncompliance Began	Enter Compliance Date			
								\$0
							<b>Total Penalty:</b>	<b>\$6,167</b>