**Utah Division of Drinking Water - Policy to Implement a Penalty Fee for Construction without Plan Approval**

1. **Intent**

Beginning July 1, 2015, the Division of Drinking Water (the Division) is authorized to assess a penalty fee of $1,000 for construction of each Public Drinking Water Project without Plan Approval. The Division is establishing a policy to assess penalties consistently and to help Public Water Systems avoid penalties by establishing clear guidelines for when and how a penalty will be assessed.

1. **Background**
2. R309-500-4 requires Public Drinking Water Projects to obtain Plan Approval or Plan Submittal Waivers issued by the Director of the Division of Drinking Water (the Director) prior to the start of construction. Examples of Public Drinking Water Projects include the following:
* Construction of a proposed drinking water system facility
* The addition or modification of a drinking water system facility that may affect the quality or quantity of drinking water
* Any activity that may affect the quality or quantity of drinking water, such as adding multi-connection subdivisions or industrial/commercial water users; water tank recoating or relining; water line relining; change or addition of a water treatment process; development of surface sources, springs, or wells; spring or well redevelopment; modifications to a water treatment plant; replacement of a well pump with one of a different capacity; or deepening of a well
1. Public Drinking Water Projects do not include on-going operation and maintenance projects, which do not require Plan Approval or Plan Submittal Waivers. Examples of operation and maintenance projects include the following:
* Repairing water line leaks
* Replacing deteriorated water lines not involving long-term planning and complex design
* Tapping water mains for new service connections
* Adding 500 feet or less of new water distribution lines of the same size as existing lines
* Inspecting, cleaning, or maintaining water storage tanks
* Replacing equipment with the same type, size, or rated capacity of existing equipment, including fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders, or booster pumps

The Division does not assess penalties related to ongoing operation and maintenance projects because they do not require Plan Approval.

1. **Penalty Assessment**
2. The Division will assess a penalty of $1,000 for each Public Drinking Water Project that starts construction on or after July 1, 2015, without Plan Approval or a Plan Submittal Waiver except as described in item b. below.
3. The Division will not assess penalties for the following drinking water projects. However, these projects must be reported to the Division and must receive after-the-fact Plan Approvals and/or Operating Permits from the Division.
	* Public Drinking Water Projects that have been constructed or started construction *prior* to July 1, 2015, without Plan Approvals or Plan Submittal Waivers.
	* Public Drinking Water Projects that have an estimated construction cost of $10,000 or less and have been constructed without Plan Approvals or Plan Submittal Waivers.
	* Facilities that were constructed by a water provider that did not meet the definition of a Public Water System at the time of construction but subsequently became a Public Water System. In other words, the facilities were constructed when the provider served fewer than 25 individuals and fewer than 15 service connections.
4. A Public Water System will be assessed 50 to 200 Improvement Priority System (IPS) deficiency points for constructing a project without Plan Approval whether or not a penalty is assessed. The deficiency for construction without Plan Approval will remain in effect until Plan Approval and an Operating Permit for the project are issued by the Director.
5. If a penalty has not been paid within 120 days after the date of the assessment notice, 100 IPS deficiency points will be assessed to the Public Water System for failure to comply with a division directive per R309-400-11(6)(a). The penalty fee deficiency will remain in effect until the penalty is paid. If the penalty remains unpaid, the deficiency will remain effective for three years.
6. **Written Notice of Penalty Assessment**

The Director will send written notice of a penalty assessment to a Public Water System that starts construction of a Public Drinking Water Project without obtaining Plan Approval or a Plan Submittal Waiver as described above. The water system will have 120 days from the date of the notice to pay the penalty by check or money order.

1. **Challenge to Penalty Assessment**

A Public Water System that has received notice of a penalty assessment for failure to obtain Plan Approval has 30 days from receipt of the written notice to challenge the assessment. The challenge must be in writing, be addressed to the Director of the Division of Drinking Water, be received by the Director within 30 days after receipt of the penalty assessment notice, and include documentation supporting why the penalty should not be assessed based on one or more of the following conditions:

1. Plan review was not required for the project
2. The Public Drinking Water Project was constructed prior to July 1, 2015
3. The Public Drinking Water Project cost was $10,000 or less
4. The water provider was not a Public Water System when the facility was constructed

The Director will respond to a penalty assessment challenge in writing with a final decision. If the penalty assessment is upheld, the water system will have 120 days from receipt of the Director’s decision to pay the penalty.