

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,
MORONI FEED
SETTLEMENT AGREEMENT DOCKET NO. I14-05**

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:

- Moroni Feed's failure to prevent overflows from the equalization basin,
- Failure to notify the Division of Water Quality of the overflows and
- Failure to operate the equalization basin properly.

Moroni Feed stated in their response to the NOV that overflows had occurred from April 11, 2014 to April 26, 2014. The overflows lasted from 3 to 4 hours each and it was estimated that no more than 36,000 gallons overflowed from the equalization tank during each overflow. Based on the information provided in this paragraph a Category B penalty was used to calculate the gravity penalty.

No credit was given for degree of negligence. Moroni Feed made no effort to resolve issues prior to an inspection conducted by the Department of Environmental Quality. Credit was given for history of compliance at only 50% because Moroni Feed has had compliance issues in the past but none recently. Credit was given for good faith efforts to comply at only 25% since Moroni Feed did not resolve the issue until after the equalization basin had overflowed 10 times over 15 days. Based on this information, 15 violations were assessed at \$1,625 each for a gravity penalty of \$24,375.

A category D penalty was used to calculate the gravity penalty for failing to notify the DWQ of the overflow. Credit was not given for the failure to notify DWQ of the overflows, since Moroni Feed did not notify the DWQ and has in the past failed to notify DWQ of permit violations. Based on this information, 15 violations were assessed at \$500 each for a gravity penalty of \$7,500.

A category D penalty was used to calculate the gravity penalty for the failure to operate the equalization basin properly. Credit was given, at 100%, for history of compliance since there isn't any history of failures of the basin in the past. No credit was given for good faith efforts to comply and degree of negligence. Moroni Feed failed to properly operate and maintain the basin which could have prevented the overflows

from occurring. Based on this information, 15 violations were assessed at \$333 each for a gravity penalty of \$5,000.

Economic Benefit Justification:

BEN is a program developed by EPA to determine the economic benefit a violator has gained by not complying with regulations. A BEN was done for this SA based on the actions taken by Moroni Feed. The BEN calculation was generated using information provided by Moroni Feed. The one time expenditures of \$34,171 are based on the removal of the fat from the equalization basin and the repair of a pump. The calculated penalty using the BEN model was \$128. The calculation sheets for BEN are attached.

