

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR
SALT LAKE CITY, SETTLEMENT AGREEMENT DOCKET No. M15-01**

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*).

SALT LAKE CITY Statutory Maximum of \$10,000/violation/day for 1 days for 1 violation(s) = \$10,000
(Calculated as required)

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; and
- 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 SALT LAKE CITY has been calculated as follows:

Gravity Component:

The gravity component of the penalty is based on the following citations:

1. Utah Code Ann. § 19-5-107(1)(a) for causing pollution which could constitute a menace to public health and welfare, and could be harmful to wildlife, fish or aquatic.
2. Utah Code Ann. § 19-5-107(3)(a) for discharging wastes to a water of the State without an authorized discharge permit.
3. Section of I.D.1.a. of The Permit for discharge untreated wastewater to a water of the State.
4. Section of I.D.1.b. of The Permit for discharge of untreated that could have created a health hazard, nuisance, or is a threat to the environment.
5. Utah Admin. Code R317-2-7.2 for discharging a waste which may have become offensive such as floating debris, oil, scum or other nuisances such as color, odor or taste.
6. Section of I.D.2.a(1) of The Permit for not properly maintaining all parts of the sewer collection system.

On February 19, 2014 Salt Lake City (SLC) inspected the sewer line by closed circuit television (CCTV) and found a section of broken pipe. At this time the pipe confirmed that it held a constant water level and no evidence was found of any discharge. Based on this inspection the pipe was placed on SLC's regular maintenance program to be cured in place pipe (CIPP) liner repaired.

On June 26, 2014 SLC crews returned to the location to CIPP liner repair the pipe. Prior to repair the pipe was CCTV and no holes or discharges were noted. Following CCTV the line was high pressure jet cleaned. Following the high pressure cleaning the line was again CCTV inspected and a 2" wide hole about 8" in circumference was discovered in the 10" diameter pipe. It was then noted that untreated wastewater was free flowing out of the pipe to an adjacent UDOT storm drain box. It is estimated the hole discharged at approximately 7 gpm for 90 minutes for an estimated 609 gallons. The City's report¹ in response to the NOV states "City crews walked down stream of the discharge point and checked the storm drain pipe and Nibley pond. No visible discharge evidence was observed downstream." The break repairs were completed by 3:30 pm the same day.

VIOLATIONS:

Based upon the information presented in SLC's report¹, SLC was in violation for 1 day (June 26, 2014). Based on the report SLC staff confirmed the discharge did not reach Nibley golf course or Waters of the State. Since the

¹ Sanitary Sewer Overflow State of Utah notice of Violation and Order, Docket No. M15-01. March 24, 2015 (DWQ-2015-004428)

overflow event was confined to the UDOT storm drain box the Division of Water Quality (DWQ) finds that no menace to public health was created and Violation 1 is vacated. In addition, the DWQ finds the discharge did not reach Waters of the State and Violations 2 and 3 are vacated. Last, based on the maintenance records and detailed chronological timeline report¹ the DWQ finds SLC was not negligent in maintaining all part of the sewer system and Violation 6 is vacated. Based on these findings this settlement agreement will be assessed on Violation 5.

Utah Administrative Code R317-1-8.3

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.

Violation 5 is for the discharge of waste which may have become offensive such as oil, scum or other nuisances such as color, odor or taste. The discharge charge did not reach a Water of the State and SLC staff was onsite for the entirety of the discharge event. The DWQ finds Violation to be a minor violation and will be assessed at Category D.

Mitigation considerations are subdivided into three equal categories (1/3 each for History of Compliance, Degree of Negligence, and Degree of Cooperation).

Credit for degree of negligence

SLC will be given 70% credit for degree of negligence in the penalty calculation. This credit is given because SLC was not found to be negligent in the repairs of this pipe.

Credit for history of compliance

SLC's report¹ states a class 2 SSO (single home) sewer backup caused by roots and grease occurred January 23, 2013. SLC will be given 70% credit for history of compliance in the penalty calculation due to the occurrence of this previous event.

Credit for good faith efforts to comply

SLC will be given 100% credit for good faith efforts in the penalty calculation. SLC showed good faith with actions taken by City staff to respond to the event and notify the DWQ.

\$100/day/violation x 1 violations x 1 day = \$100 Total Category D Penalty

Economic Benefit Justification:

Economic benefit associated with SLC 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 recent construction, engineering and/or product costs as appropriate. The field entries for the Environmental Protection Agency (EPA) economic benefit model (BEN) were provided by SLC for the following categories, as appropriate:

- Capital Investment: This part of the calculation includes pollution items that were not bought to avoid the discharge such as treatment systems, silt fencing, gravel socks, etc. It was not found that SLC deliberately avoided any capital investments.
- Expenditures: This part of the calculation includes costs of items such as inspections, monitoring, and record keeping set up that were delayed. It has not been found that SLC was insufficiently inspecting, monitoring, or keeping records for the project.
- O & M Costs: Avoided operation and maintenance costs were used in the economic benefit calculation. It was not found that SLC knowingly avoided any operation or maintenance cost but misunderstood the required effluent quality.

BEN is a program developed by EPA to determine the economic benefit a violator has gained by not complying with regulations. The economic benefit calculation was done with the current BEN program provided by the EPA. The penalty for the economic benefit portion of non-compliance is \$0 as calculated.

TOTAL PENALTY AMOUNT: \$100 + \$0 = \$100

MITIGATION PROJECTS (SUPPLEMENTAL ENVIRONMENTAL PROJECTS)

Mitigation projects must fully adhere to *UAC R317-1-8.4*. SLC agrees not to attempt to gain or generate any positive publicity, and further agrees not to deduct or otherwise attempt to obtain a tax benefit from the foregoing funding of the mitigation project(s). Approved mitigation projects shall only be applied to the gravity component of the total penalty amount (\$100).

1. Training Programs - Work with either RWAU or WEAU; SLC will provide mitigation funds for a training seminar. The agenda and course work must be specifically associated with operation, maintenance and performance improvement issues related to collection systems, as approved by the DWQ Director.
2. Mitigation Project(s) – To be determined by SLC. These projects must be approved by the DWQ Director and at least partially involve an area of water pollution control.
3. Anonymous Donation(s) – Donations can be submitted to a nonprofit organization to be used for environmental education, improving the environment or other environmental purposes. The donation must be approved by the DWQ Director.

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