

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,  
SWIFT BEEF HYRUM PLANT  
SETTLEMENT AGREEMENT DOCKET NO. I14-02**

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 a discharge to an irrigation canal due to a plug in a sewer collection line at the plant. The discharge occurred for approximately one hour. Due to the fact that the overflow of approximately 600 gallons occurred during the non-irrigation season and that the irrigation ditch receives Hyum's WWTP discharge and other inputs before reaching Spring Creek, DWQ believes that a Category C penalty is appropriate.

Credit was given for degree of negligence at 75%. SWIFT does have a monthly cleaning frequency of the plant collection lines, however, an alarm system was not installed at the time of the event nor did SWIFT routinely inspect the lines which would have alerted them to the presence of rocks in the line that likely contributed to the plug which caused the overflow.

Credit was given for history of compliance at 50% since SWIFT has had similar problems with overflows from their collection system in the past. A NOV was issued in 2011 for an overflow to Waters of the State due to a plug in the plant collection lines due to a different issue.

Credit was given for good faith efforts to comply at 100% since SWIFT notified DWQ within one hour of becoming aware of the overflow, immediately addressed the overflow and ran a root cause analysis and created and began implementation of an action plan to prevent future overflows.

**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 not done for this SA because of the actions taken immediately in response to the event as well as actions taken to resolve the issues which caused the overflow to Waters of the State. There was no economic benefit gained by SWIFT in this occurrence.