

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR
UINTAH WATER CONSERVANCY DISTRICT, SETTLEMENT AGREEMENT, DOCKET NO.
SA113-07**

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 R317-1-8*).

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

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.

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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 UINTAH WATER CONSERVANCY DISTRICT has been calculated as follows:

Gravity Component:

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

The Kids Canal also known as the Ashley Central Canal runs through Vernal, Utah. The Kids Canal eventually empties into an unnamed pond near 3250 East 2500 South in Naples Utah, which then drains toward Ashley Creek. The Kids Canal is a water of the state.

On July 15, 2013 the Environmental Health Director for the Tri-County Health Department (TCHD) was notified by the Vernal City Police Department that several hundred trout were discovered dead in the Kids Canal near 1500 West Hwy 40 in Vernal, Utah. This information was forwarded as a spill report to the Department of Environmental Quality (DEQ) by TCHD. This report was tracked as Incident #11464.

On that same day, TCHD personnel visited the site with Division of Wildlife Resources staff from the Vernal Regional Office. They observed and documented several hundred dead Rainbow trout along a one half to one mile stretch of the canal.

On July 16, 2013 TCHD personnel met with personnel of the Uintah Water Conservancy District ("Uintah Water") at the Uintah Water offices and they were able to identify that on July 15, 2013, Uintah Water had treated the canal with the pesticides Teton (Mono(N,N-diethyl alkyl amine salt of endothall) and Cascade (dipotassium endothall salt), and that the fish kill was most likely the result of an over application of Teton. Teton is a pesticide used for the purpose of controlling algae and other aquatic plants. A warning label on the Teton container explicitly stated the material was toxic to Rainbow trout when over-applied.

This section of the Kids Canal is also fed by a natural groundwater spring from an adjoining property and is stocked with fish. The impacted portion of the Kids Canal was stocked with fish three times in the spring of 2013: 413 fish the week of May 13th, 413 fish the week of June 3rd, and 412 fish the week of June 24th.

At all relevant times, Uintah Water was operating under Utah Pollutant Discharge Elimination System (UPDES) Pesticide General Permit (PGP) UTG-170000, under permit number UTG-170008. In the Permit, Part I it defines and describes the coverage, effluent limitations and monitoring requirements; Part II defines and describes the monitoring, recording and reporting requirements; Part III it defines and describes the Compliance Responsibilities. More specifically:

- Part I. E. Technology-Based Effluent Limitations prohibits over application of pesticides, and violation of Narrative Standard.
- Part I. H. defines the Pesticide Discharge Management Plan Requirements,
- Part I. I. defines how to modify it,
- Part II. A. defines the site monitoring requirements,

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- Part II. B. defines twenty-four hour reporting in the permit,
- Part II. D. defines monitoring and records,
- Part III. A. defines the duty to comply with the Permit,

As part of the NOV Uintah Water was ordered to submit some documentation relating to the incident, specifically:

- An account of the treatment of the canal and the resulting fish kill.
- Pesticide Discharge Management Plan, as it was before this incident.
- A report on the changes to the Pesticide Discharge Management Plan you deem necessary to prevent future violations.
- The new modified Pesticide Discharge Management Plan
- A plan to prevent this from re-occurring.
- Monitoring records and reports for the treatment event: the submission related to the Uintah Water monitoring records,

The submission was complete except for the Pesticide Discharge Management Plan (PDMP). Upon meeting with Water Quality the need for an adequate PDMP was explained, and examples were collected. Upon review of the PDMP it was deemed more than adequate for the permit. This plan is considered a major component of the pesticide program. An adequately prepared and followed plan should help assist in the proper pesticide application and post application monitoring would identify any fish kill that might occur. The new plan shows a dedication to prevent any future incidents on any waterway they treat.

Uintah Water responded to the report of the fish kill immediately and accepted responsibility without protest. Uintah Water will be given 75% credit for "good faith efforts to comply" in the penalty calculation.

Uintah Water has shown that it has adjusted its process and the product used to reduce the toxicity, and improve the treatment results. Uintah Water will be given 75% credit for "degree of negligence" in the penalty calculation.

The history of compliance for Uintah Water is not very long. The Pesticide permit program has only been established for a short time. This is the first report of any violation by them. For this reason they will be given 75% credit for "history of compliance or non-compliance" in the penalty calculation.

The fish kill is estimated to have taken place on one day, and the toxicity in the canal is estimated to have diminished after that initial kill. No subsequent fish kills were observed. For this reason the violations are being calculated as spanning 1 day.

Violations from the NOV

Violation 1. Unlawful discharge of a pollutant into waters of the state or causing pollution, which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life. Utah Code Ann. § 19-5-107(1)(a).

This violation qualifies to be classified as a Category A, with it being downgraded to a B depending on the impact of the release on human health and the environment. This violation resulted in the documented death of fish in the canal. After considering the facts of the release and response, it has been determined that the incident does warrant being downgraded to a Category B.

Violation 2. Making a discharge not authorized under an existing valid discharge permit. Utah Code Ann. § 19-5-107(3)(a).

Violation 3. Utah Admin. Code § R317-2-7.2 for a discharge that resulted in a violation of the Narrative Standard.

Violation 4. For the application of pesticide that resulted in the fish kill in the Kids Canal resulted in the following Permit violations:

- a. UPDES Permit UTG-170008 Part I. E.1.a. for over application of a pesticide;
- b. UPDES Permit UTG-170008 Part I. E.1.d. for violation of Narrative Standard.
- c. UPDES Permit UTG-170008 Part I. F.2. for application of pesticide that resulted in an impact on a non-target organism.
- d. UPDES Permit UTG-170008 Part I.G. for failure to meet narrative standards.
- e. UPDES General Permit UTG-170008 Part I. H. for failure to produce and follow a Pesticide Discharge Management Plan.
- f. UPDES Permit UTG-170008 Part II, B. for failure to report noncompliance to Water Quality as required in the Permit.

The different parts of this violation could be broken out and individually categorized as different violations due to their nature. They could each individually qualify as Category A, B, C or D. To simplify the process they will be combined as one. Portions of this violation do mirror other cited violations above. The portions that don't mirror the violations above are the product of a Pesticide Discharge Management Plan and failure to report the noncompliance to Water Quality.

Due to the similar nature of the violations noted in Violations 2, 3 and 4, they will be combined into one violation. The combined violation qualifies to be classified as a Category B, with it being elevated to an A, or downgraded to a C depending on the impact of the release on human health and the environment. After considering the facts of the release, it has been determined that the incident warrants being elevated to a Category C after considering the newly developed Pesticide Discharge Management Plan and other efforts to prevent future releases.

The violation total comes to one Category B violation and one Category C violation, all over one day. From the attached spreadsheet this comes to a total penalty of \$4,125.00.

Economic Benefit Justification:

Economic benefit received for Uintah Water is calculated based on: 1.capital investment delayed; 2.delayed expenditures and; 3.expenses not incurred. Avoided and delayed expenses are estimated based on a survey of current construction, engineering and product costs.

- Capital Investment: This part of the calculation includes pollution items that were not bought to avoid the discharge such as silt fencing, gravel socks, etc.
- Expenditures: This part of the calculation includes costs of items such as inspections, monitoring, and record keeping set up that were delayed.
- O & M Costs: Avoided operation and maintenance costs were used in the economic benefit calculation.

Uintah Water has had coverage under the permit for a short time. This program does not require the construction of major facilities or works. Thus Capital Investments and continued O&M costs are negligible. The cost of the expenditures avoided is also minute when compared to the civil portion of the penalty. For these reasons a BEN is not being calculated.

In place of a BEN it has been decided that Uintah Water should cover the cost of stocking fish in the canal.

