

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR
EP ENERGY, SETTLEMENT AGREEMENT DOCKET No.I14-10**

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*).

EP Energy Statutory Maximum of \$10,000/violation/day for 1 day for 4 violation(s) = \$40,000

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 EP Energy has been calculated as follows:

Gravity Component:

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

1. *UCA § 19-5-107(1)(a)* It is unlawful for any person to discharge a pollutant into waters of the state, unless the discharge is authorized by permit. Waters of the State means “all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.” Utah Code Ann. § 19-5-102(23)(a). See also an identical definition at Utah Admin. Code (UAC) § R317-1-1.31.
2. *UCA § 19-5-107(3)(a)* It is unlawful for any person to make any discharge not authorized under an existing valid discharge permit.
3. *UAC § R317-2-7.1* prohibits any person from discharging, or placing any wastes or other substances, in a manner that may interfere with water’s designated uses, or to cause any of the applicable standards to be violated.
4. *UAC § R317-2-7.2* prohibits any person from discharging, or placing any wastes or other substances, in a such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste.
5. *UAC § R317-2-13. Classification of Waters of the State* – Classifies the Starvation Reservoir as 1C, 2A, 3A, and 4.
6. *UAC § R317-2-14. Numeric Criteria* – Lists numeric criteria for Waters of the State.

VIOLATIONS:

VIOLATION 1, It is unlawful for any person to discharge a pollutant into waters of the state, unless the discharge is authorized by permit. Utah Code Ann. § 19-5-107(1)(a).

VIOLATION 2, It is unlawful for any person to make any discharge not authorized under an existing valid discharge permit. Utah Code Ann. § 19-5-107(3)(a)

VIOLATION 3, *UAC § R317-2-7.1* for discharging substances that may interfere with water’s designated uses, or to cause any of the applicable standards to be violated.

VIOLATION 4, *UAC § R317-2-7.2* for discharging substances that may cause the narrative standard to be violated

On August 29, 2014 at 2:30 pm, **EP Energy** personnel reported a release of 868 barrels of produced water from a break in an oil pipeline. The break was in the pipeline which runs from the Cedar Rim 15 booster station to the Cedar Rim 6 booster station. The discharge reported to Rabbit Gulch a tributary of the Starvation Reservoir and within the Drinking Water Source Protection Zone (Incident Report No. 11940). The discharge flowed overland across a natural depression filled with sagebrush and dead wood before dropping down a rocky and steep slope into an unnamed drainage. The discharge then flowed down this tributary and into Rabbit Gulch. Following an inspection of Rabbit Gulch it has been estimated that beaver dams may have limited the mobilization of

pollutants. Kleinfelder was contracted to conduct the cleanup. On August 29, 2014 Kleinfelder conducted water quality monitoring at 6 different locations; including samples collected in the unnamed drainage, Rabbit Gulch, and Starvation Reservoir. Results of the sampling detected diesel range organics in the waters of the tributary to Starvation Reservoir below the discharge location. Due to the rocky and steep slope access to Rabbit Gulch, cleanup activities was deemed unfeasible, so mitigation efforts were only undertaken in the overland areas.

Sample ID	Site Description	Diesel Range Organics (C ₁₀ -C ₂₈)
RP01	Source analysis	97 mg/L
SP02	Illicit discharge location into tributary of Rabbit Gulch	4.1 mg/L
SP03	Confluence of Rabbit Gulch and tributary	2.1 mg/L
SP05	Rabbit Gulch Upstream of Starvation Reservoir	ND
LP06	Starvation Reservoir	ND

As previously discussed the Starvation Reservoir and tributaries are Class 1C water. The measured impact to Starvation Reservoir's tributary demonstrates a violation of *UAC R317-2-7.1*. The potential to impact Class 1C water qualifies this as a major violation and warrants assessment at penalty Category A or B. Due to the measured results within a tributary of the Starvation Reservoir this demonstrates an impact to environment, therefore, **this violation will be assessed at Category B.**

Based on the result of the sample collected at SP05 any impacts within Starvation Reservoir were brief in nature and minimal. Thus assessment of this event as 1 day of violation and reducing the four violations down to two is appropriate. Based on this, for the purpose of this Settlement Agreement, the four violations will be **assessed as 2 violations for 1 day for the penalty calculation.**

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

-Credit for degree of negligence.

EP Energy will be given 50% credit for degree of negligence in the penalty calculation. DWQ encourages EP Energy to undertake preventative maintenance and replacement activities to cease all discharges from pipelines. Given that EP Energy already had a project underway to replace this pipeline with a buried composite pipeline EP Energy is given a 50% credit.

-Credit for history of compliance.

EP Energy will be given 0% credit for history of compliance in the penalty calculation. This was the third incident involving EP Energy recorded in the DEQ Environmental Incidents Database. Produced water from EP Energy was part of a discharge event within Starvation Reservoir Drinking Water Source Protection Zone on April 8, 2014 (Incident Report No. 11778). Incident 11778 did not reach surface water. Also produced water from EP Energy was part of a discharge event within Duchesne County on August 25, 2014 (Incident Report No. 11934). Incident 11934 did not reach surface water.

-Credit for good faith efforts to comply.

EP Energy will be given 50% credit for good faith efforts in the penalty calculation. EP Energy showed good faith with the response to the event, communication, sampling, and cleanup effort undertaken.

\$4,667/day/violation x 2 violation x 1 day = \$9,334 Category B Penalty

Economic Benefit Justification:

Economic benefit associated with EP ENERGY 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 EP ENERGY 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 EP Energy deliberately avoided any capital investments. EP Energy was already undertaking a capital investment project to replace this pipeline.
- 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 EP Energy was insufficiently inspecting, monitoring, or keeping records for the facility.
- O & M Costs: Avoided operation and maintenance costs were used in the economic benefit calculation. It has not been found that EP Energy knowingly avoided replacing the valve which broken. Further, it was not found that valve replacement was recommended by any of the regulatory community.

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. It was not found that EP ENERGY had any economic benefit by the non-compliance. Therefore, the penalty for the economic benefit portion of non-compliance is **\$0** as calculated.

TOTAL PENALTY AMOUNT: \$9,334 + \$0 = \$9,334

MITIGATION PROJECTS (SUPPLEMENTAL ENVIRONMENTAL PROJECTS)

Mitigation projects must fully adhere to *UAC R317-1-8.4*. EP Energy 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 (\$9,334).

- (1) Mitigation Project(s) – To be determined by EP Energy. These projects must be approved by the 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.