

ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR, WEIR MINERALS, NA SLC – RUBBER ENGINEERING SETTLEMENT AGREEMENT DOCKET NO. I14-04

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*).

Statutory Maximum of \$10,000/violation/day for 1 violation for 7 days = \$70,000.00

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; 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 WEIR MINERALS, NA SLC – RUBBER ENGINEERING has been calculated as follows:

Gravity Component:

The gravity component of the penalty is based on violations noted in the notice of violation and order.

1. *UAC R317-8-7.1(1)(a)* for not complying with all conditions of UPDES permit # UT0024767. Sample Analyses were not taken and DMRs were not received for eight monitoring periods for outfalls 001 and 002.
2. *Part I.D* of UPDES permit # UT0024767 for failure to comply with monitoring frequency requirements as noted above.
3. Part II.2 of the UPDES permit # UT0024767 for failure to comply with monitoring requirements as noted above.

Weir Minerals, NA SLC – Rubber Engineering (WMRE) responded to the notice of violation in a letter received July 11, 2014. WMRE was able to locate all of the sample analyses for the missing DMR. The sample for October 2013 was collected, but there was a sample bottle mix up at the lab, and WMRE was not notified until after the end of the monitoring period. WMRE submitted the DMRs with the lab data as a hard copy to DWQ, which was received on October 09, 2014. The received DMR showed that there were six instances of significant non-compliance, which are listed below.

Based on the response to the notice of violation and subsequent data received, DWQ believes that the violations noted in the notice of violation have been rectified. However, the data that was received shows additional UPDES permit effluent violations.

The gravity component of the penalty is based on violations:

- Significant excursions of permit effluent limits, and not following monitoring and reporting requirements of the UPDES permit # UT0024767.

VIOLATION: WMRE reported significant effluent violations for Oil and Grease two times and total suspended solids 4 times from January 2013 to January 2014.

The violation is classified as a Category C violation for:

- Significant excursions of permit effluent limits, which are listed below:

Date	Parameter	Permit limit Concentration	Recorded Concentration
January 2013	Total Suspended Solids	25 mg/L	343 mg/L
February 2013	Total Suspended Solids	25 mg/L	506 mg/L
	Oil and Grease	10 mg/L	51 mg/L
May 2013	Oil and Grease	10 mg/L	41 mg/L
December 2013	Total Suspended Solids	25 mg/L	1120 mg/L
January 2014	Total Suspended Solids	25 mg/L	216 mg/L

VIOLATION: WMRE failed to submit a DMR for the month of October 2013.

The violation is classified as a Category C violation for:

- Substantial non-compliance with reporting requirements.

The reporting violation occurred one time in October 2013. The significant effluent violations occurred 6 times in the period from January 2013 through January 2014. Percent credit was based on the following: 75% credit was given for the history of compliance, for not having previous significant water quality violations at this facility, 75% credit was given for good faith efforts on the response time to investigate the and submit the missing DMR data, and hiring an outside firm to collect the samples. 50% credit was given for degree of negligence for continuing taking effluent samples, even though reports were not submitted. The penalty will be calculated as 1 Category C violation at for 7 days. Total penalty for the violation is \$7,000.00.

Efforts made by WEIR MINERALS, NA SLC – RUBBER ENGINEERING to prevent any recurrence of this incident include:

- WMRE has contracted with an environmental consulting firm to perform a comprehensive review of the facility’s environmental permits, and will provide technical guidance to ensure compliance with the UPDES permit and oversee all sampling activities.

Economic Benefit Justification:

Economic benefit (BEN) received for WEIR MINERALS, NA SLC – RUBBER ENGINEERING would be calculated based on; 1. Capital investment delayed; 2. Delayed expenditures; 3. Expenses not incurred. Avoided and delayed expenses would be estimated based on a survey of current market, engineering and product costs.

It was determined, as a result of the response to the NOV; WMRE had just failed to submit one DMR. WMRE was able to locate the missing data and submit the data with the DMR. This additional data showed six instances of significant non-compliance. This supports the decision not to complete a BEN calculation for these violations since no economic benefit was derived from the non-compliance.

