



State of Utah

GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

Department of  
Environmental Quality

L. Scott Baird  
Executive Director

DIVISION OF WATER QUALITY  
Erica Brown Gaddis, PhD  
Director

March 9, 2020

**CERTIFIED MAIL**  
**(Return Receipt Requested)**

Central Weber Sewer Improvement District  
Attn: Kevin Hall, Manager  
2618 West Pioneer Road  
Ogden, UT 84404

Subject: Proposed Penalty and Settlement Agreement, Docket No. M19-07  
Central Weber Sewer Improvement District Sewage Discharge  
DEQ Environmental Incident Report #14221

Dear Mr. Hall,

Enclosed is the proposed Settlement Agreement (Agreement) to resolve a Notice of Violation (NOV) issued to Central Weber Sewer Improvement District by the Division of Water Quality (DWQ). This Notice of Violation was issued as a result of a large discharge of raw sewage into Four Mile Creek near Ogden, Weber County, Utah, on or about March 1, 2019.

Attached please find two copies of the Agreement, along with the supporting penalty documents to formally resolve the NOV. If you are in agreement, please sign both documents (do not date them) and return to our office within 10 days of receipt.

We are required to give public notice of the Agreement for thirty days. If there are no significant changes necessary as a result of the public comment period, the Agreement will be finalized. Once finalized, we will send you a fully executed copy for your records, along with an invoice for the penalty amount.

If you have any questions regarding this information, please contact Kevin Okleberry at 801-536-4054 or [kokleberry@utah.gov](mailto:kokleberry@utah.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Erica Brown Gaddis".

Erica Brown Gaddis, PhD  
Director

EBG/KO/blj

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Proposed Penalty and Settlement Agreement, Docket No. M19-07  
Central Weber Sewer Improvement District Sewage Discharge  
DEQ Environmental Incident Report #14221

Enclosures:    1. Settlement Agreement (DWQ-2020-005568)  
                  2. Penalty Calculation and Justification (DWQ-2020-005566)  
                  3. Penalty Calculation Sheet (DWQ-2020-005570)

Cc:    Via Email  
          Michela Harris, Weber County Health Department  
          Meg Osswald, Office of Attorney General

DWQ-2020-005572

**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY  
UTAH DIVISION OF WATER QUALITY**

<b>IN THE MATTER OF In the Matter of: Central Weber Sewer Improvement District Attn: Kevin Hall, Manager 2618 West Pioneer Road Ogden, UT 84404</b>	<b>SETTLEMENT AGREEMENT</b>  <b>Docket No. M19-07</b>
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This Administrative Settlement Agreement (hereinafter "**Settlement**") is between the Director of the Utah Division of Water Quality ("**Director**") and Central Weber Sewer Improvement District ("**Respondent**") pursuant to the Director's authority to administer the Utah Water Quality Act. The **Director** and **Respondent** are sometimes referred to hereinafter as "**the Parties**."

1. The **Director** has authority to administer the Utah Water Quality Act ("the **Act**") pursuant to Utah Code Section 19-1-105(1)(e), and has authority to enforce rules through the issuance of orders, as specified in Utah Code Sections 19-5-106(2)(d) and 19-5-111. The **Director** also has authority to settle any civil action initiated to compel compliance with the **Act** and implementing regulations pursuant to Utah Code Section 19-5-106(2)(k).
2. **Respondent** is a "person" as that term is defined in Utah Code Section 19-1-103(4).
3. This **Settlement** is entered into for the purposes of avoiding further administrative enforcement based upon the following findings and violation[s]:
4. On or about November 12, 2019 the Utah Division of Water Quality (Division) received a report from Central Weber Sewer Improvement District of a discharge of an unknown amount of untreated sewage into Four Mile Creek, a tributary of the Weber River in Weber County, Utah which occurred on or about November 11, 2019. The untreated sewage was overflowing from two manholes located near the Facility because it was not being pumped out of Central Weber's underground piping. According to the results of a preliminary post-incident investigation performed by Central Weber and sent to the Division on or about November 14 and December 10, 2019, the discharge was caused by "personnel error" which included improper techniques used during maintenance, improper response by the staff, and improper communication during a shift change. These actions caused the sewage pumps in a pump station to shut down allowing the sewage to back up into the system and overflow into Four Mile Creek.
5. On or about November 12, 2019, employees of Central Weber inspected the discharge location near Four Mile Creek. They observed "...sewer debris on wet ground in a narrow flow path...leading to the creek." The employees also collected two water

samples from Four Mile Creek, the first from a location approximately 1000 feet upstream from the point where the sewage entered the creek and the second was collected at a point approximately 500 feet downstream from the point where the sewage entered the creek. These water samples were then analyzed at the Facility laboratory for content of *Escherichia coli* (E. coli) bacteria. The first (upstream) sample contained 135.4 MPN (Most Probable Number) per 100 mL of water, while the second (downstream) sample contained 613.1 MPN per 100 mL of water. These results suggest the sewage discharge of November 11, 2019 significantly elevated the concentration of E. coli bacteria in the water of Four Mile Creek.

6. In response to the discharge, the **Director** issued a Notice of Violation and Compliance Order Docket No. M19-07 (NOV/CO) to **Respondent** on February 3, 2020.
7. **Respondent** timely complied with the requirements in the NOV/CO to the **Director's** satisfaction, such that no further remedial action to address the violation(s) is necessary.
8. The **Parties** voluntarily enter into this **Settlement** to resolve the NOV/CO issued to the **Respondent** without the necessity of further administrative or judicial proceedings.
9. **Respondent** understands and agrees that a penalty in the amount of \$3,667.00 is appropriate based on the application of Division's penalty policy contained in Utah Administrative Code R317-1-8 as applied to the violation(s) under the circumstances specified herein. This proposed settlement and penalty is subject to a thirty (30) day notice and comment period as provided for in Utah Administrative Code R305-7-402. The **Parties** each reserve the right to withdraw from this **Settlement** if comments received during the notice period result in a modification to the terms and conditions.
10. By entering into this **Settlement**, **Respondent** neither admits nor denies the findings, violations or deficiencies specified herein.
11. **Respondent** agrees to the terms, conditions and requirements of this **Settlement**. By signing this **Settlement**, Respondent understands, acknowledges and agrees that it waives: (1) the opportunity for an administrative hearing pursuant to Utah Code Section 19-1-301; (2) the right to contest the finding(s) in the NOV/CO, ; and (3) the opportunity for judicial review.
12. The **Parties** mutually agree that this **Settlement** is entered in good faith and is an appropriate means to resolve the matters specified herein.
13. This **Settlement** will be final after the thirty day notice and comment period, on the date the **Director** signs the **Settlement**,
14. **Respondent** agrees that within fifteen (15) calendar days of receiving the signed and final **Settlement** from the **Director**, Respondent shall submit a certified or cashier's check written to the Division of Water Quality in the amount specified in paragraph 10, above and hand deliver or send by certified mail to:

Division of Water Quality  
PO Box 144870  
Salt Lake City, Utah 84114-4870

15. Notwithstanding paragraph 11 above, the violations described herein will constitute part of **Respondent's** compliance history where such history is relevant, including any subsequent violations. **Respondent** understands and agrees that this **Settlement** is not and cannot be raised as a defense to any other action to enforce any federal, state or local law.

16. This **Settlement**, when final, is binding upon **Respondent** and any corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrants that it is authorized to legally bind their respective principals to this **Settlement**.

ACCEPTED BY BASIN WESTERN, INC.:

Name (print) \_\_\_\_\_

Title (print) \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

DIVISION OF WATER QUALITY

\_\_\_\_\_

Date \_\_\_\_\_

Erica Brown Gaddis, PhD  
Director

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR  
CENTRAL WEBER SEWER IMPROVEMENT DISTRICT SETTLEMENT AGREEMENT  
DOCKET No. M19-07**

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 R317-1-9*).

CENTRAL WEBER SEWER IMPROVEMENT DISTRICT Statutory Maximum of \$10,000/violation/day for one day, for one violation = \$10,000.00 (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.

**FACTS:**

1. On information and belief, Central Weber Sewer Improvement District (Central Weber), is a Special-Service District which operates the Central Weber Wastewater Treatment Facility (Facility) in Weber County, Utah.
2. On or about November 12, 2019 the Utah Division of Water Quality (Division) received a report from Central Weber Sewer Improvement District of a discharge of an unknown amount of untreated sewage into Four Mile Creek, a tributary of the Weber River in Weber County, Utah which occurred on or about November 11, 2019. The untreated sewage was overflowing from two manholes located near the Facility because it was not being pumped out of Central Weber's underground piping. According to the results of a preliminary post-incident investigation performed by Central Weber and sent to the Division on or about November 14 and December 10, 2019, the discharge was caused by "personnel error" which included improper techniques used during maintenance, improper response by the staff, and improper communication during a shift change. These actions caused the sewage pumps in a pump station to shut down allowing the sewage to back up into the system and overflow into Four Mile Creek.
3. On or about November 12, 2019, employees of Central Weber inspected the discharge location near Four Mile Creek. They observed "...sewer debris on wet ground in a narrow flow path...leading to the creek." The employees also collected two water samples from Four Mile Creek, the first from a location approximately 1000 feet upstream from the point where the sewage entered the creek and the second was collected at a point approximately 500 feet downstream from the point where the sewage entered the creek. These water samples were then analyzed at the Facility laboratory for content of *Escherichia coli* (E. coli) bacteria. The first (upstream) sample contained 135.4 MPN (Most Probable Number) per 100 mL of water, while the second (downstream) sample contained 613.1 MPN per 100 mL of water. These results suggest the sewage discharge of November 11, 2019 significantly elevated the concentration of E. coli bacteria in the water of Four Mile Creek.
4. Utah Administrative Code R317-2-13. Classification of Waters of the State – classifies Four Mile Creek at the location of the discharge as a 2B, 3C, 3D, 4 Water of the State. These designations protect the recreational, aquatic wildlife, and agricultural uses of water in Four Mile Creek and the Weber River.

## **VIOLATIONS**

The Gravity Component of the penalty is based on the following citations:

### **Violations of Utah Water Quality Standards**

VIOLATION 1: Utah Code Section 19-5-107(1)(a) for discharging a pollutant into waters of the State in violation of its discharge permit.

### **PENALTY: The penalty for CENTRAL WEBER has been calculated as follows:**

#### **Penalty Category B:**

Category B - \$2,000 to \$7,000 per violation per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include any discharges "...which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage" or created "...a serious hazard to public health or the environment" or contained "...significant quantities or concentrations of toxic or hazardous materials." **CENTRAL WEBER** discharged a significant amount of sewage into Four Mile Creek, a source of irrigation water and recreational use. Based on results of analysis of water samples and subsequent inspections, the conditions which caused this violation lasted for at least one day. Total Category B penalty: **\$7,000.00**.

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: As described in paragraph 2 of the Facts section, the discharge of sewage into Four Mile Creek was due to operator error. According to information provided by **CENTRAL WEBER**, the improper techniques used during maintenance, improper response by the staff, and improper communication during a shift change. 0% credit given, \$0.00 deducted.

Credit for history of compliance: Based on Division of Water Quality records, there have been no Notices of Violation issued to **CENTRAL WEBER** within the past 5 years. 100% credit given, \$1,667.00 deducted.

Credit for good faith efforts to comply: As noted in paragraph 3 of the Facts section, **CENTRAL WEBER** immediately began cleanup and monitoring efforts as soon as the discharge was discovered. 100% credit given, \$1,667.00 deducted.

Total deduction: \$3,334.00 per violation/day.  $\$7,000.00 - \$3,334.00 = \$3,667.00$  penalty per violation/day X 1 violation-days = **\$3,667.00**.

**Economic Benefit Justification:**

BEN is a program developed by EPA to determine the economic benefit a violator has gained by not complying with regulations. No economic benefit to **CENTRAL WEBER** was determined to have been gained from this incident, so economic benefit is \$0.00.

**TOTAL PENALTY AMOUNT: \$3,667.00 + \$0.00 = \$3,667.00**

**COST RECOVERY**

Employees of the Central Weber Sewer Improvement District performed an inspection of the discharge site and collected water samples for analysis. No sampling or on-site inspections were performed by Utah Division of Water Quality Employees. Labor costs for the preparation of the Notice of Violation were considered to be negligible. Total cost of sampling and labor: \$0.00.

**TOTAL PENALTIES AND COSTS: \$3,667.00 + \$0.00 + \$0.00 = \$3,667.00**

UPDES PENALTY CALCULATION SHEET

LEGAL NAME AND MAILING ADDRESS OF OPERATOR		UPDES Permit Number	FACILITY DESCRIPTION / CONTACT NAMES					
Central Weber Sewer Improvement District 2618 West Pioneer Road Ogden, Utah 84404		UT0021911	Name of Site Contact: Lance Wood					
		Date of Analysis: 2/21/2020	Name of Authorized Official:					
		Site Name: Four Mile Creek Sewage	Telephone Number:					
		NOV/SA Docket No. M19-07						
		DEQ Analyst Name: Kevin Okleberry						
PERMIT COVERAGE	Category of Violation Enter Max \$ Per Day	Credit for Degree of Negligence	Credit for History of Compliance	Credit for Good Faith Efforts	Total Penalty Per Day	No. of Violation Days	Dollar Amount	Total
Category A	\$7,000-\$10,000	0%	0%	0%	\$10,000	0	\$0	\$0
	Reduction	\$0	\$0	\$0				
Category B	\$2,000-\$7,000	0%	100%	100%	\$3,667	1	\$3,667	\$3,667
	Reduction	\$0	-\$1,667	-\$1,667				
Category C	\$500-\$2,000	0%	0%	100%	\$1,500	0	\$0	\$0
	Reduction	\$0	\$0	-\$500				
Category D	\$0-\$500	0%	0%	0%	\$500	0	\$0	\$0
	Reduction	\$0	\$0	\$0				
							<b>Total Gravity:</b>	<b>\$3,667</b>
Economic Benefit	Enter Capital Investment Cost (Delayed Capitol)	Enter Expenditures (Delayed)	Enter Annual O & M Costs (Avoided)	Enter Date Noncompliance Began	Enter Compliance Date			
(Enter Numbers From BEN worksheet)								
							<b>Total BEN:</b>	
DWQ-2020-005570							<b>Total Penalty:</b>	<b>\$3,667</b>