

UTAH WATER QUALITY BOARD

Mark Wagner Blue Tip Castlegate, Inc. 1205 Independence Ave. Price, UT 84501,	DOCKET NUMBER I12-01 SETTLEMENT AGREEMENT
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This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **BLUE TIP CASTLEGATE, INC** (hereinafter "**OPERATOR**") and the **UTAH WATER QUALITY BOARD** (hereinafter the "**BOARD**"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The **BOARD** has authority to administer the *Utah Water Quality Act, as amended 1953*, (hereinafter the "**ACT**").
2. The **BOARD** has been delegated authority by the U.S. Environmental Protection Agency (EPA) to administer the *National Pollutant Discharge Elimination System (NPDES)* permit program under the *Federal Clean Water Act (CWA)*.
3. The parties now desire to resolve this matter fully without further administrative proceedings except to the extent provided herein by entering into this **AGREEMENT**. Entering into this **AGREEMENT** is not an admission of liability or factual allegation set out in the **NOTICE**, nor is it an admission of or an agreement to any disputed facts or disputed legal theories, nor is it an admission of any violation of any law, rule, regulation or permit by the **OPERATOR**.
4. The **EXECUTIVE SECRETARY** of the **BOARD** (hereinafter the "**EXECUTIVE SECRETARY**") will administer the terms and provisions of this **AGREEMENT**.
5. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number I12-01 (hereinafter the "**NOTICE**"), between the **OPERATOR** and the **BOARD**, issued to the **OPERATOR** on February 1, 2012, by the **BOARD**. It does not in any way relieve the **OPERATOR** from any other obligation imposed under the Act or any other State or Federal laws.
6. In resolution of said **NOTICE** referenced in Paragraph 5 of this **AGREEMENT**, the **OPERATOR** agrees to;
 - a. pay a total penalty amount of \$6,125 within 30 days of the effective date of this **AGREEMENT** by check made payable to the State of Utah.
 - b. Submit to the **EXECUTIVE SECRETARY** for his approval within 30 days of the effective date of this **AGREEMENT**, a report detailing efforts to prove the integrity

of the disposal line and insure the integrity of the line.

Submittals required under this AGREEMENT shall be delivered or mailed to the Division of Water Quality, Department of Environmental Quality, 195 North 1950 West, P.O. Box 144870, Salt Lake City, Utah 84114-4870. The penalty has been determined using the *Penalty Criteria for Civil Settlement Negotiations, Utah Administrative Code ("UAC") R317-1-9* which considers such factors as the nature, severity and extent of the violations, history of noncompliance, degree of willfulness and/or negligence, good faith efforts to comply, and economic benefit.

7. Nothing contained in this AGREEMENT shall preclude the BOARD from taking additional actions to include additional penalties against the OPERATOR for permit violations not resolved by this AGREEMENT.
8. If an agreement between the OPERATOR and the EXECUTIVE SECRETARY cannot be reached in a dispute arising under any provision of this AGREEMENT, then the OPERATOR or the EXECUTIVE SECRETARY may commence a proceeding with the BOARD under the *Administrative Procedures Act* to resolve the dispute. A final decision in any adjudicative proceeding shall be subject to judicial review under applicable state law.
9. Nothing in this AGREEMENT shall constitute a waiver by the OPERATOR to raise in defense any legal or factual contention for future allegations of noncompliance.
10. Nothing in this AGREEMENT shall constitute or be considered as a release from any claims, to include natural resource damage claims, cause of action, or demand in law or equity which the STATE may have against the OPERATOR, or any other person, firm, partnership or corporation for any liability arising out of or relating in any way to the release of pollutants to waters of the State.

AGREED to this ____ day of _____, 2012.

BLUE TIP CASTLEGATE, INC

UTAH WATER QUALITY BOARD

By *Mike Ceulli*
Authorized Agent

By _____
Executive Secretary

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,
BLUE TIP CASTLEGATE, INC, SETTLEMENT AGREEMENT, DOCKET NO. SAI12-01**

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.

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 BLUE TIP CASTLEGATE, INC has been calculated as follows:

Gravity Component:

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

The morning of October 11, 2011, David Ariotti, DEQ District Engineer for Southeast Utah, received a complaint via phone from LeRoy Mead of the Division of Wildlife Resources, Price Office. Mr. Mead had been contacted by a landowner on Summit Creek in Emma Park, Carbon County, about a suspected leaking produced water pipeline on his property. Mr. Mead contacted Mr. Ariotti and a meeting was arranged for that afternoon. DEQ District Engineers David Ariotti and Scott Hacking (District Engineer for the Uintah Basin area), met Mr. Mead near the site at approximately 3:00pm and were led by Mr. Mead to the suspected leak location. The location was right at Summit Creek, just to the northwest of the Blue Tip Castlegate Inc., gas facility in Emma Park.

At that time Mr. Ariotti and Mr. Hacking observed that there was a disturbance in Summit Creek, where water was "boiling up" from the water surface, erupting several inches above the water surface of Summit Creek. Mr. Ariotti and Mr. Hacking observed that this disturbance in Summit Creek was in direct alignment with the nearby pipeline markers that apparently mark a produced water pipeline that crosses Summit Creek perpendicularly in this area. The approximate location of the site is at GPS coordinates 39.800163°, -110.773592°. Mr. Ariotti and Mr. Hacking also observed that the flow volume of Summit Creek (which is a very small creek in this area) was significantly increased downstream of the "boiling up" disturbance as compared to the upstream condition of Summit Creek.

Mr. Ariotti and Mr. Hacking collected water samples while at the Summit Creek site on October 11, 2011, and Mr. Hacking also collected additional samples of Summit Creek on October 12, 2011. Lab results from those samples showed the water collected from Summit Creek upstream of the disturbance in the creek had a Total Dissolved Solids (TDS) value of 626 mg/l. Water collected from Summit Creek downstream of the disturbance in the creek had a Total Dissolved Solids (TDS) value of 1,490 mg/l.

The Division of Oil, Gas and Mining made a subsequent site inspection of Blue Tip facilities and noted the evidence of the leaking production waterline.

In the reports presented, Blue Tip Castlegate made the assumption that the release had been ongoing for seven days prior to being discovered. The discharge ended shortly after the line was shut off on when they were notified of the issue. For calculations sake, the start of the discharge will be considered to be seven days prior to discovery. That puts the start on October 4, 2011. This gives a total of seven days of discharge for calculating the penalty.

Blue Tip Castlegate responded to the report of the release immediately and shut off the flow of produced water in the line. Blue Tip Castlegate will be given 75% credit for "good faith efforts to comply" in the penalty calculation.

The leak was determined to be from a small hole in the produced water line. There is no indication of when the last inspection on the line was performed. Marion Energy will be given 75% credit for "degree of negligence" in the penalty calculation.

This was the first incident involving the Blue Tip Castlegate produced water line. Blue Tip Castlegate will be given 75% credit for "history of compliance or noncompliance" in the penalty calculation.

VIOLATION 1, Utah Code Ann. § 19-5-107(1)(a), for the unpermitted release of a pollutant (production water) from the pipeline and introduction of the pollutant into Summit Creek, a tributary of the Price River, as described in Findings of Fact Sections 1 through 4

This violation qualifies to be classified as a Category C, with it being elevated to a B, or downgraded to a D depending on the potential impact of the release on human health and the environment. After considering the fact of the release, it has been determined that the incident doesn't warrant being elevated to a Category B, and thus will be classified as a Category C violation.

VIOLATION 2, Utah Administrative Code R3172-7.2, for the release of a waste or a substance (production water) into Summit Creek, a tributary of the Price River, in such a way as it did or may have become offensive, as described in Findings of Fact Sections 1 through 4.

This violation qualifies to be classified as a Category C, with it being elevated to a B, or downgraded to a D depending on the potential impact of the release on human health and the environment. After considering the fact of the release, it has been determined that the incident doesn't warrant being elevated to a Category B, and thus will be classified as a Category C violation.

VIOLATION 3, Utah Administrative Code R3172-7.1, for the release of production water from the pipeline and introduction of production water into Summit Creek, a tributary of the Price River, thereby causing a violation of water quality standards and interference with the designated uses of said waters, as described in Findings of Fact Sections 1 through 4.

This violation qualifies to be classified as a Category C, with it being elevated to a B, or downgraded to a D depending on the potential impact of the release on human health and the environment. After considering the fact of the release, it has been determined that the incident doesn't warrant being elevated to a Category B, and thus will be classified as a Category C violation.

Investigations along the creek indicated that the release of produced water did not result in major impacts on the ecology, and was remediated very quickly. For this reason the three violations will be combined into one, and calculated over seven days.

UPDES PENALTY CALCULATION SHEET

LEGAL NAME AND MAILING ADDRESS OF OPERATOR		UPDES Permit Number			FACILITY DESCRIPTION / CONTACT NAMES			
Blue Tip Castlegate, Inc. 1205 Independence Ave. Price, Utah 84501		Date of Analysis 7/30/2012			Name of Site Contact:			
		Site Name: Summit Creek			Name of Authorized Official:			
		NOV/SA Docket No. M12-01			Telephone Number:			
		DEQ Analyst Name Daniel Griffin						
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 C	\$7,000-\$10,000	75%	75%	75%	\$875	7	\$6,125	\$6,125
	Reduction	-\$375	-\$375	-\$375				
Category C	\$2,000-\$7,000	75%	75%	75%	\$875	0	\$0	\$0
	Reduction	-\$375	-\$375	-\$375				
Category C	\$500-\$2,000	75%	75%	75%	\$875	0	\$0	\$0
	Reduction	-\$375	-\$375	-\$375				
Category D	\$0-\$500	0%	0%	0%	\$500	0	\$0	\$0
	Reduction	\$0	\$0	\$0				
							Total Gravity:	\$6,125
Economic Benefit	Enter Capital Investment Cost (Delayed Capital)	Enter Expenditures (Delayed)	Enter Annual O & M Costs (Avoided)	Enter Date Noncompliance Began	Enter Compliance Date			
(Enter Numbers From BEN worksheet)						Total BEN:	\$0	
							Total Penalty:	\$6,125