

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,  
NRM TRANSPORT, LLC,  
SETTLEMENT AGREEMENT, DOCKET NO. I14-07SA**

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 NRM TRUCKING has been calculated as follows:

**Gravity Component:**

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

On April 24, 2014 around 7 am, a truck transporting turkeys for NRM Trucking (NRM) crashed into Deer Creek reservoir in Provo Canyon. The accident resulted in the release of diesel fuel from the truck's fuel tanks. In addition as a result of the accident, the load of turkeys was released into the reservoir.

By 8:30 am on the 24<sup>th</sup>, the accident had been reported to the National Response Center and Department of Environmental Quality. DWQ personnel responded to the accident site to investigate the release. They observed the truck being removed from the reservoir and the containment measures for the diesel fuel and turkey carcasses. In addition, the DWQ Monitoring Section responded to the accident site and conducted water quality monitoring in the reservoir for diesel range organics (DRO) and volatile organic compounds (VOCs). Four samples were collected from the following locations: 1. Mid Channel, 2. Below Boom S.W., 3. Above Boom N.E., and 4. Inside Boom. Results of DRO and VOCs analysis were all non-detect, except at locations: 3. Above the Boom NE where DRO was measured at a concentration of 1.34 mg/L and 4. Inside the Boom, where DRO was measured at a concentration of 3.52 mg/L.

Environmental contractors were onsite and started the assessment and cleanup process by 10 am on April 24, 2014. Early work by the contractor was focused on containment of released diesel fuel, removal of turkeys, and removal of the vehicle. On April 25, a diving subcontractor arrived on site to proceed with removal of submerged turkey carcasses. Final removal of all booms from the reservoir occurred on May 5. The last of the debris and turkey carcasses were removed on May 20. NRM states in the July 5, 2014 report, in a discussion on July 1, 2014 with Lewis Hastings of Wasatch County Health Department he stated he had "No concerns at all, as far as the safety of the water are concerned for all of its intended purposes."

NRM responded to the accident immediately by calling in all available employees to assist in the clean up, as well as calling in an environmental cleanup contractor, and has made an effort to completely remediate the site. When taken into consideration, NRM will be given 75% credit for "good faith efforts to comply" in the penalty calculation.

NRM has not been found of any negligence involved in the accident. In addition, NRM has held additional safety meeting for all drivers to avoid such an event from reoccurring. NRM will be given 75% credit for "degree of negligence" in the penalty calculation.

This was the first incident involving NRM recorded in the DEQ Environmental Incidents Database LHD. They have been problem free operators. NRM will be given 90% credit for "history of compliance or non-compliance" in the penalty calculation.

**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 as noted in C.4.

**VIOLATION 4**, *UAC R317-2-7.2* for discharging substances that may become offensive, such as oil, and may cause undesirable aquatic life effects and undesirable human health effects.

For the purpose of calculating a penalty for this Settlement Agreement the four violations will be combined into one, single violation. Typically, this type of violation is classified as a Category B, with it being elevated to an A, or downgraded to a C 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 A, and thus will be classified as a Category B violation. However, for the majority of the cleanup response period the toxic source had been eliminated with the bulk of the time spent removing turkey carcasses, shoreline cleanup, and changing absorbent booms. With no toxic source the violation does warrant being reduced from a Category B violation.

As a result of the accident, the truck released the bulk of its fuel source when it crashed into the water. This resulted in the bulk of the toxic release on April 24<sup>th</sup>. Containment measures such as booms were being deployed by the same day of the accident. As a result of the nature of the diesel release and near immediate cleanup activities, this warrants the violation being reduced to a Category C violation starting April 25<sup>th</sup>.

The date of April 29<sup>th</sup>, 2014 was the day the bulk of the shoreline cleaning was complete, from that day until May 20, 2014 the cleanup activity was reduced to mainly turkey carcass removal. Based on the July 5, 2014 report, long term impacts of the turkey carcasses in the reservoir were not observed. This portion of the violation will be downgraded to a Category D violation, and the penalty adjusted accordingly.

The incident started on April 24<sup>th</sup>. This will be the start date for calculating the penalty. The violation ends on May 20<sup>th</sup>, which comes to 26 days of violations. With the above explained conditions, there is one day of violation at a Category B level, four days at the Category C level and 37 days at a Category D level.

**Economic Benefit Justification:**

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

Capital Investment: This part of the calculation includes pollution items that were not bought to avoid the accident such as upgraded trucks. There is no evidence that the truck malfunctioned or was not in proper operating condition. Thus no capital investment benefit can be demonstrated.

Expenditures: This part of the calculation includes costs of items such as inspections, monitoring, and record keeping set up that were delayed. There is no evidence that the driver was not properly trained to be driving the truck. In addition, during emergency response all document reports indicate the company was responsive in taking every measure possible to protect human health and the environment so no saved remediation expenditures can be demonstrated.

O & M Costs:            Avoided operation and maintenance costs were used in the economic benefit calculation. There is no evidence that the truck malfunctioned or was not in proper operating condition. Thus no O&M benefit can be demonstrated.

The accident was not traced to any mechanical failure of the truck or lack of training. Further, according to the July 5 report this accident has cost the company \$420,705.30 in losses, emergency responses, and environmental remediation. This supports the decision that a BEN calculation does not fully fit in this situation and will not be run.

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