Settlement Confidential

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR PAYSON CITY SETTLEMENT AGREEMENT**

**DOCKET No. M23-07**

Section 19-5-115 of the Utah Water Quality Act (the Act) provides for penalties of up to $10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to $25,000 per day for willful violations. The penalties for the above-referenced docket number have been calculated according to guidelines established in the Division of Water Quality penalty policy in Utah Admin. Code R317-1- 8.

# PAYSON CITY Statutory Maximum (calculated below in accordance with R317-1-8.3):

$10,000.00 per 28 violations = **$280,000.00 Statutory Maximum**

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 whether a civil penalty should be sought, 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 violation(s);
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:

Category A - $7,000 to $10,000 per day. Violations with high impact on public health and the environment, including 1) discharges which result in documented public health effects and/or significant environmental damage and 2) any type of violation not mentioned above severe enough to warrant a penalty assessment under Category A.

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Category B - $2,000 to $7,000 per day. Major violations of the Act and associated regulations, permits, or orders, including 1) discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage; 2) creation of a serious hazard to public health or the environment; 3) illegal discharges containing significant quantities or concentrations of toxic or hazardous materials; and 4) any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - $500 to $2,000 per day. Violations of the Act and associated regulations, permits, or orders, including: 1) significant excursion of permit effluent limits; 2) substantial non- compliance with the requirements of a compliance schedule; 3) substantial non-compliance with monitoring and reporting requirements; 4) illegal discharge containing significant quantities or concentrations of non-toxic or non-hazardous materials; and 5) any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - Up to $500 per day. Minor violations of the Act and associated regulations, permits, or orders, including 1) minor excursion of permit effluent limits; 2) minor violations of compliance schedule requirements; 3) minor violations of reporting requirements; 4) illegal discharges not covered in Categories A, B and C; and 5) any type of violations not mentioned previously which warrants a penalty assessment under Category D.

Penalty amounts are determined according to the violation(s) Category within the penalty ranges specified above and based on the following factors:

* History of compliance or non-compliance,
* Degree of willfulness and/or negligence, and
* Good faith efforts to comply.

Additionally, the civil penalty shall be calculated by adding the following adjustments to the penalty amount determined:

* Economic benefit gained as a result of non-compliance;
* Investigative costs incurred by the State and/or other governmental levels; and
* Documented monetary costs associated with environmental damage.

# CIVIL PENALTY: The civil penalty for PAYSON CITY has been calculated as follows:

For purposes of this settlement, the penalty calculation counts monthly violations as a single day or event, despite the fact that 30 days per month could arguably be assessed.

# PENALTY CATEGORY

**VIOLATION 1:** UPDES Permit No. UT0020427 condition I.C.2.a. for exceeding permit effluent concentration limits for cyanide, total.

Discharge from the Facility exceeded the maximum monthly average effluent limitation for cyanide, for discharge into Beer Creek, during twenty-five (25) months. For purposes of this settlement, cyanide violations occurring prior to January 2022 are not included in the assessed penalty and cyanide violations occurring after the NOV/CO issuance (August, October, November 2023) are included.

Penalty Category Determination: **C**

Total Category **C** penalty: **$2,000.00 x 15 Violations = $30,000.00**

**VIOLATION 2:** UPDES Permit No. UT0020427 condition I.C.2.a. for exceeding permit effluent concentration limits for nitrogen, ammonia [as N].

Discharge from the Facility exceeded the interim daily maximum effluent limitation for ammonia, for discharge into Beer Creek, during twenty (20) months. These interim ammonia limits were in effect until December 31, 2023. The final ammonia limits (more stringent than the interim limits) go in effect no later than January 1, 2024. For purposes of this settlement, ammonia violations occurring prior to January 2022 are not included in the assessed penalty.

Penalty Category Determination: **C**

Total Category **C** penalty: **$2,000.00 x 11 Violations = $22,000.00**

**VIOLATION 3:** UPDES Permit No. UT0020427 condition I.C.2.a. for exceeding permit effluent concentration limits for mercury, total.

Discharge from the Facility exceeded the maximum monthly average effluent limitation for mercury, for discharge into Beer Creek, during four (4) months. For purposes of this settlement, mercury violations occurring prior to January 2022 are not included in the assessed penalty.

Penalty Category Determination: **C**

Total Category **C** penalty: **$0.00**

**VIOLATION 4:** UPDES Permit No. UT0020427 condition I.C.2.a. for exceeding permit effluent concentration limits for Biochemical Oxygen Demand (BOD).

Discharge from the Facility exceeded the maximum weekly average effluent limitation for BOD, for discharge into Beer Creek, during April 2022.

Penalty Category Determination: **C**

Total Category **C** penalty: **$2,000.00 x 1 Violations = $2,000.00**

**VIOLATION 5:** UPDES Permit No. UT0020427 condition I.D.1 for failure to report monthly sampling results for Oil & Grease.

Payson City failed to submit monthly DMR sampling results for Oil & Grease into NetDMR for the monitoring period of May 2019. For purposes of this settlement, reporting violations occurring prior to January 2022 are not included in the assessed penalty.

Penalty Category Determination: **D**

Total Category **D** penalty: **$0.00**

**VIOLATION 6:** UPDES Permit No. UT0020427 condition I.D.1 for failure to report quarterly sampling results for cyanide.

Payson City failed to submit quarterly DMR sampling results for cyanide, total [as CN] into NetDMR for the monitoring period of November 2019 through January 2020. For purposes of this settlement, reporting violations occurring prior to January 2022 are not included in the assessed penalty.

Penalty Category Determination: **D**

Total Category **D** penalty: **$0.00**

**VIOLATION 7:** UPDES Permit No. UT0020427 condition I.D.1 for failure to report DMRs by the required permit deadlines.

Payson City failed to enter Discharge Monitoring Report (DMR) monitoring results into NetDMR no later than the 28th day of the month following the completed reporting period, for the quarterly monitoring results of Quarterly WET Testing and Quarterly Metals for permitted Outfall 001. Payson City submitted the Quarterly WET Testing DMR for the monitoring period of April 2023 through June 2023 on August 9, 2023, twelve (12) days after the required submittal date. Payson City submitted the Quarterly Metals DMR for the monitoring period of August 2020 through October 2020 on December 7, 2020, nine (9) days after the required submittal date. Due to technical difficulties discovered with the NeTDMR system, the Division is not assessing penalties for these violations at this time.

Penalty Category Determination: **D**

Total Category **D** penalty: **$0.00**

**VIOLATION 8:** UPDES Permit No. UT0020427 condition I.C.4.b. for failure to follow approved WET testing and sampling procedures.

On September 1, 2022, the Division identified the Facility’s WET testing sampling procedures did not meet the temperature requirements of permit condition I.C.4.b.

Penalty Category Determination: **D**

Total Category **D** penalty: **$500.00 x 1 Violation = $500.00**

Penalty Category Total: $30,000.00 (V1) + $22,000.00 (V2) + $0.00 (V3) + $2,000.00 (V4) + $0.00 (V5) + $0.00 (V6) + $0.00 (V7) + $500.00 (V8) = **$54,500.00**

# ADDITIONAL CONSIDERATIONS

The following factors are considered in order to determine where the penalty amount will fall within each penalty category range. These factors are subdivided into three equal categories, 1/3 each, for: History of Compliance or Noncompliance, Degree of Willfulness and/or Negligence, and Good Faith Efforts to Comply.

* Credit for history of compliance: Based on Division of Water Quality records, Payson City has not had previous enforcement actions. However, upon review of the complete list of violations that have occurred since 2019, the Division notes that Payson City has violated the terms of its permit fifty-five (55) times. **$9,166.33.00 deducted**.
* Credit for degree of negligence: Based on information provided by Payson City, they began investigating options to upgrade their wastewater treatment plant in 2014. From 2016 through 2018, Payson City worked with the Division to research constructing a regional wastewater treatment facility. After that was determined not to be a feasible option, Payson City continued to invest in improving their existing facility.

*Cyanide*

Payson has inspected the cause of the cyanide effluent limit violations and has determined it is unlikely it is a result of a discharger to their collection system. Payson believes the cyanide concentrations would be generated during the wastewater treatment process from two possible causes:

1. The wastewater treatment facility may be generating cyanide on-site due to an interaction of nitrites and chlorine during the disinfection process.
2. It is possible the cyanide detections are false positives due to reactions between nitrite and chlorine during the time between sample collection and when laboratory analysis is occurring.

In 2021, an attempt to oxidize the cyanide from the effluent stream was unsuccessful. Sampling the effluent prior to disinfection during March 2022 through June 2023 resulted in non-detect or near the method detection limit for concentrations of free cyanide. To address the cyanide effluent limit exceedances, Payson City is replacing the chlorine disinfection with a UV disinfection system. In the interim, Payson City continues to investigate ways to mitigate the cyanide effluent limit exceedances. They have contracted the Thatcher Company to assist with mitigation programs including:

1. The use of ferric sulfide to remove cyanide from the effluent stream;
2. Reviewing if it’s possible to lower the dosage of chlorine during the disinfection process can be utilized while continuing to meet E. coli permitted effluent limits;
3. Researching the use of an iron sponge to absorb and remove cyanide at the end of the chlorine contact tank; and
4. Partnering with Chemtech-Ford to determine if alternative sampling methods can be utilized to determine if false-positives are occurring during cyanide analysis.

*Ammonia*

Payson has inspected the cause of the ammonia effluent limit violations and has determined it is likely due to increased flow rates from rapid population growth. Due to the increase in flow, their existing trickling filter and STM Aerator has not been able to fully nitrify the effluent stream to meet permit requirements.

*BOD*

Payson has inspected the cause of the BOD effluent limit violations and has determined it is likely due to increasing influent loading, a process upset, and the inability of the system to properly respond to the occasional increased flow rates due to rapid population growth.

*Mercury*

Payson has inspected the cause of the mercury effluent limit violations. Payson City believes the cause of the mercury effluent limit violations was due to erroneous reporting of sampling results. Payson City has determined three of the exceedances were data entry errors and one exceedance was the result of an erroneous laboratory report. Payson City submitted the original laboratory sampling reports from Chemtech-Ford to the Division for verification. To prevent reporting errors as the result of data entry errors, Payson City has implemented new policies to ensure data entry controls. There is now a two person check on all data entered to NetDMR to prevent errors for future entries.

*Wet*

Payson has inspected the cause of the testing and sampling procedure violation and determined the refrigerator used for storage of samples was not maintaining a proper temperature. To correct the WET Testing and sampling procedure violation, Payson City replaced the malfunctioning refrigerator with a new refrigeration unit.

Payson has inspected the cause of the missing monitoring and sampling results and has determined it was likely due to an oversight during data entry into the DMR form and was inadvertently omitted. Payson was not able to access NetDMR during the submittal process and contacted the Division via email to resolve the issue in both instances. The technical issues were resolved, and the reports were submitted at that time. **$12,333.33 deducted**.

* Credit for good faith efforts to comply: According to information provided by Payson City, in their November 27, 2023, response to the NOV/CO, they have completed the design of a new biological nutrient removal process and contracted Alder Construction for upgrades to their wastewater treatment plant and to construct a new Membrane Bioreactor plant. For these upgrades, Payson City was approved for a $13,500,000 loan from the SRF, is receiving

$6,065,355 in APRA grant funds through the Utah Lake Preservation Fund. Payson City has also updated their construction contract with Adler Construction to reflect meeting State Revolving Fund requirements. The remaining balance of the $72 million will be made up using cash reserves and additional municipal bonds.

Payson City has been working with the Division since 2021 to resolve the cyanide effluent limit violations occurring at the Facility. Payson City implemented changes to their sampling procedure during winter 2023 and has not had any cyanide effluent limit exceedances since November 2023.

To address the ammonia and BOD effluent limit exceedances, Payson City has installed surface aeration equipment into an unused aeration tank located at the Facility. Flow from the trickling filter is currently being routed through this aeration tank prior to treatment in the STM Aerator tanks, allowing longer hydraulic retention time while increasing the mixed liquor suspended solids of the activated sludge system. **$17,333.34 deducted**.

Total deductions: ($9,166.33.00 + $12,333.33 + $17,333.34.00) = **$38,833.00**

Total Penalty Category with deductions: ($54,500.00) – ($38,833.00) = **$15,667.00**

# ADJUSTMENTS

Economic Benefit

The civil penalty shall be calculated by adding the economic benefit gained by the violator, as a result of non-compliance. The Division has not identified an economic benefit gained from costs avoided or delayed at this time. Total Economic Benefit: = **$0.00**

Investigative Costs

The civil penalty shall be calculated by adding the investigative costs incurred by the State and/or other governmental levels. Labor costs for the preparation of the Notice of Violation and this Settlement were **79** hours, totaling $**8,910.00** (calculated in accordance with Utah Department of Environmental Quality Fiscal Year 2023 Fee Schedule). Total Investigative Costs: = **$8,690.00**

Environmental Damage

The civil penalty shall be calculated by adding documented monetary costs associated with environmental damage. To the Division’s knowledge, there is no documented environmental damage at this time. Total Environmental Damage = **$0.00**

Total Adjustments = ($0.00) + ($8,690.00) + ($0.00) = **$8,690.00**

# ECONOMIC AND LEGAL CONSIDERATIONS

An adjustment downward may be made, or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case. To the Division’s knowledge, there is no documented inability of the violator to pay.

Total Economic and Legal Considerations: = $**0.00**

**TOTAL CIVIL PENALTY: ($15,667.00) + ($8,690.00) – ($0.00) = $24,357.00**