



Colorado Department
of Public Health
and Environment

Water Quality Control Division

**STORMWATER
CIVIL PENALTY POLICY**

This policy is used by the Colorado Department of Public Health and Environment, Water Quality Control Division, to determine civil penalties for stormwater violations.

Steven H. Gunderson, Director
Water Quality Control Division

January 25 2007
Date

**Colorado Department of Public Health and Environment
Water Quality Control Division**

Stormwater - Civil Penalty Policy

TABLE OF CONTENTS

I. INTRODUCTION	3
II. DOCUMENTATION OF INFORMATION	4
III. PENALTY CALCULATION METHODOLOGY	4
IV. MULTI-DAY VIOLATIONS	6
V. MULTIPLE VIOLATIONS	8
VI. ABILITY TO PAY	9
VII. RESERVATION OF RIGHTS	10
ATTACHMENT A.....	11
ATTACHMENT B.....	15
ATTACHMENT C.....	19

**Colorado Department of Public Health and Environment
Water Quality Control Division**

STORMWATER - CIVIL PENALTY POLICY

I. INTRODUCTION

The fundamental purpose of the Water Quality Control Division's ("Division") Stormwater Program is to ensure that the discharge of pollutants from stormwater point sources does not cause or contribute to exceedances of water quality standards or harm beneficial uses of streams, lakes and rivers. The Colorado Discharge Permit System requires several categories of stormwater dischargers to obtain permits and control sources of pollutants in stormwater through the development and implementation of a Stormwater Management Plan (SWMP). The plan must include Best Management Practices (BMPs), which may include treatment of stormwater discharges along with source reduction practices.

This civil penalty policy is developed to implement the Colorado Department of Public Health and Environment's penalty authority established in the Colorado Water Quality Control Act (the "Act") as it relates to violations of stormwater related requirements. Pursuant to §25-8-608(1) of the Colorado Revised Statutes any person who violates any provision of the Act or of any permit issued under the Act, or any control regulation promulgated pursuant to Act, or any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs.

This document sets forth the Division's policies, procedures, interpretations, and internal guidelines that shall be used in determining the appropriate amount of civil penalties the Division will seek (as applicable) in response to stormwater violations.

The purpose of this civil penalty policy is to ensure that penalties for stormwater violations are assessed in a uniform and consistent manner, while allowing for a reasonable amount of flexibility and discretion; that penalties are appropriate in view of the gravity or seriousness of the violation committed; that any economic benefit of noncompliance is eliminated; that penalties are sufficient to deter violators from committing future violations; and that compliance is achieved expeditiously and maintained .

This document does not address whether the assessment of a civil penalty is an appropriate enforcement response to a particular violation. Rather, this document focuses on determining an appropriate civil penalty that the Division should seek once a decision has been made to pursue a civil penalty. This policy is intended to be used by the Division in calculating penalties that the Division may administratively impose. The Division retains its full discretion to impose lesser penalties as part of negotiated settlements or to seek greater penalties under a judicial action.

The procedures set out in this document are intended solely for the guidance of Division personnel. They are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in litigation with the Division. The Division reserves the right to act at variance with this policy if warranted by the particular facts in question. The Division also reserves the right to change this policy at any time with appropriate notice and publication.

II. DOCUMENTATION OF INFORMATION

In support of each stormwater penalty calculation, enforcement personnel shall utilize the Stormwater Penalty Computation Worksheet (Attachment A), which documents in writing how the civil penalty amount was calculated and adjusted for each violation. This documentation should also include all relevant information and evidence that served as the basis for the penalty amount and shall be retained in the administrative record for each case.

The administrative record for the final civil penalty amount shall be subject to the Colorado Open Records Act and will be made available for public review upon request, except as provided in the Colorado Open Records Act (e.g., deliberative process, attorney-client privilege, etc.).

III. PENALTY CALCULATION METHODOLOGY

Development of a stormwater penalty amount under this policy is a four-step process and can be illustrated by the following equation:

Stormwater Civil Penalty = [Base Gravity Penalty (*x Days of Violation Multiplier, As Applicable*)] +/- Aggravating/Mitigating Factors + Economic Benefit

{Base Gravity Penalty = Potential Damage_{Total} + Fault + History}

{Potential Damage_{Total} = Potential Damage_{Violation 1} + Potential Damage_{Violation 2} + Potential Damage_{Violation 3...}}

Step 1 - Determine the Base Gravity Penalty: The base gravity penalty incorporates a value for three components: (A) Potential Damage (based on size of operation/activity or permit type and specific for each type of violation, then adjusted based on the beneficial use classification of the receiving water and the actual or potential harm to public health or the environment), (B) Fault and (C) History. The potential damage, fault and history penalty amounts are determined, with justification, by selecting the appropriate table value from the Stormwater Base Gravity Penalty Value Tables found in Appendix B.

(When an actual discharge has been documented and adequate data on the quality of the discharge or downstream impacted waters is available, the potential damage component shall be calculated using the potential damage methodology outlined for effluent violations in the Division's "Wastewater Civil Penalty Policy.")

Step 2 - Account for Duration of Violation: The Division shall assess multi-day penalties for applicable violations by multiplying the base gravity penalty by the number of days of violation. The resulting amount is the multi-day base gravity penalty. *(The procedures and methodology for determining penalties for multi-day violations are described in further detail in Section IV below.)*

Step 3 - Apply Aggravating or Mitigating Factors: The Division shall then apply the aggravating or mitigating factors, as applicable, to the final base gravity penalty in accordance with the aggravating/mitigating guidelines outlined in Appendix C. The application of these factors may increase or decrease the final base gravity penalty depending on case specific facts. In no case shall the final base gravity penalty be reduced by more than 100% or increased beyond the statutory penalty maximum. The resulting amount is the adjusted base gravity penalty.

Step 4 - Add Economic Benefit: The fourth step is to determine a reasonable approximation of the economic benefit realized by the violator as a result of its noncompliance. Economic benefit represents the financial savings that a violator accrues by delaying and/or avoiding expenditures necessary to meet regulatory/statutory requirements. Funds not spent on compliance with applicable requirements are available for other activities; or alternatively, a violator avoids the costs associated with obtaining additional funds necessary to ensure compliance. Economic benefit is not related to fault, per se, as a violator need not have deliberately chosen to delay compliance (for financial or any other reason), or even have been aware of its noncompliance, for it to accrue the economic benefit of non-compliance.

The appropriate economic benefit calculation should represent the amount of money that the owner/operator avoided or delayed spending on measures to achieve full compliance with the regulatory/statutory requirements. If the Division were to fail to recover at least this economic benefit, then the owner/operator would retain a financial gain. Because of the precedent of this retained gain, other regulated entities may see an economic advantage in similar noncompliance and the penalty will fail to deter potential violators. Economic benefit does not represent compensation to the Division as in typical “damage” calculations for a civil case, but instead is the minimum amount by which the violator must be penalized to return it to the position it would have been in had it voluntarily complied on time. Violators of the *Colorado Water Quality Control Act* and/or its implementing permit regulations/permits and/or final enforcement orders issued by the Division are likely to have obtained financial savings (economic benefit) as a result of expenditures that were delayed or completely avoided during the period of noncompliance.

In calculating a reasonable approximation of the realized economic benefit, the Division will consider the amount of money saved by avoiding or delaying expenditures such as, but not limited to:

- A. Cost associated with obtaining and maintaining permit coverage.
- B. Cost associated with developing, updating and maintaining a Stormwater Management Plan.
- C. Cost associated with purchasing, implementing and maintaining Best Management Practices.
- D. Cost associated with inspecting the stormwater management system.
- E. Cost associated with sampling and analysis (including laboratory fees, cost of mailing samples, and the cost of the labor to take the samples);
- F. Cost associated with capital equipment improvements or repairs, including engineering design, purchase, installation, and replacement;
- G. Operation and maintenance expenses and other annual expenses.

The Division's economic benefit calculation incorporates the concept of the “time value of money” which the Division may calculate, in its discretion, using the Environmental Protection Agency’s BEN Computer Model or another appropriate methodology. The Environmental Protection Agency’s BEN Computer Model can be downloaded from the following Internet location:

<http://www.epa.gov/compliance/civil/econmodels/index.html>

The Division will consider the economic benefit in every case and generally will include a reasonable approximation of any economic benefit realized for each violation. Economic benefit determinations shall be supported and outlined in writing in the Stormwater Penalty Computation Worksheet (Attachment A) prepared for each case.

The economic benefit component of the total penalty is calculated separately and is not adjusted by the aggravating and mitigating factors because its purpose is to ensure that the violator does not gain a competitive economic advantage by virtue of violating regulatory requirements. Even in cases where the presence of mitigating factors results in no final adjusted base gravity penalty assessment, a penalty sufficient to offset any economic benefit gained by the owner/operator will generally be imposed.

IV. MULTI-DAY VIOLATIONS

To complete the calculation for the base gravity penalty the duration of the violation must be considered. The Colorado Water Quality Control Act explicitly allows the Division to seek penalties for each day of violation. Accordingly, to the extent that violations can be shown or presumed to have continued for more than one day, an appropriate multi-day component will be included in each civil penalty calculation.

Where the Division has determined that a violation persisted for more than one day, the civil penalty will generally be calculated for the period starting on the first day of violation and ending on the date of compliance.

The calculation of the multi-day penalty is performed using the base gravity penalty amount associated with the type of violation and, in some cases, the violation duration matrix found below.

The Multi-Day Violation Matrix is utilized for violations for which continued non-compliance has been demonstrated for consecutive days. Generally, the Division will apply the Multi-Day Violation Matrix for the following types of violations:

- A. Conducting Covered Activity Without a Stormwater Permit
- B. Failure to Prepare Stormwater Management Plan (SWMP)
- C. Deficient Stormwater Management Plan (SWMP)

The duration of the violation is separated into the intervals shown on the matrix. For each time interval, the base gravity penalty is multiplied by the number of days in that interval that are alleged, and then multiplied by the percentage for that interval from the matrix. The results of this calculation for each time interval are then summed for the multi-day base gravity penalty (*see example calculation below*).

Multi-Day Violation Matrix				
Duration of Violations (in Days)				
2-10	11-50	51-100	101-200	>200
50.00%	40.00%	30.00%	20.00%	10.00%

Example Calculation:

For illustration, consider an owner/operator of a 15-acre construction site that has failed to develop a SWMP. The site has been active for 9 months and the duration of the violation has been determined to be 270 days. The beneficial use classification of receiving waters is Aquatic Life-CL2 and potential harm has been determined to be Moderate. Assuming the owner/operator has no prior violation history and fault is determined to be Category 2 (\$600 in this instance), from the Stormwater Base Gravity Penalty Value Tables found in Attachment B, the per day base gravity penalty amount is \$1,037.50 (Potential Damage + Fault + History). The multi-day base gravity penalty is then calculated using the Multi-Day Violation Matrix as follows:

Day 1	(\$1037.50)	= \$ 1,037.50
+ Days 2-10	(\$1037.50) X (9 days) X (50%)	= \$ 4,668.75
+ Days 11-50	(\$1037.50) X (40 days) X (40%)	= \$16,600.00
+ Days 51-100	(\$1037.50) X (50 days) X (30%)	= \$15,562.50
+ Days 101-200	(\$1037.50) X (100 days) X (20%)	= \$20,750.00
+ Days 201-270	(\$1037.50) X (70 days) X (10%)	= \$ 7,262.50
	<u>Multi-Day Base Gravity Penalty</u>	<u>= \$65,881.25</u>

For violations that have persisted for more than one day but are not, or cannot be determined to be, chronic daily re-occurrences, the Division reserves the right to impose the full base gravity penalty for each day that such violation took place. Generally, the Division will consider the following types of violations applicable to the full base gravity penalty per day of documented violation:

- A. Failure to Install, Maintain, or Properly Select Best Management Practices
- B. Failure to Perform Inspections of Stormwater Management System
- C. Pollution, Contamination, or Degradation of State Waters

Generally for these types of violations, the Division will calculate the number of days of violation by determining the number of regulatory agency inspection events for which BMP deficiencies were noted, the number of times in which BMP deficiencies were identified by other means (including but not limited to self inspections, construction schedule information, photographs and videos, etc.), the number of owner/operator self inspection events that were required but not timely performed, and/or the number of pollution events that occurred due to violator activities (*see example calculation below*).

Example Calculation:

For illustration, consider an owner/operator of a 15-acre construction site that has failed to perform its obligation to inspect its stormwater management system every 14 days and after any precipitation or snowmelt event that causes surface erosion. The owner/operator fails to perform its inspections for three consecutive months, which included four significant precipitation events. In this situation the Division will generally assess ten days of violation for the owner/operator's failure to perform the required inspections. The beneficial use classification of receiving waters is Aquatic Life-CL2 and potential harm has been determined to be Moderate. Assuming the owner/operator has no prior violation history and fault has been determined to be Category 2 (\$600 in this instance), from the Stormwater Base Gravity Penalty Value Tables found in Attachment B, the per day base gravity penalty amount is \$975.00 (Potential Damage + Fault + History). The multi-day penalty is then calculated as follows:

Day 1	(\$975.00)	= \$975.00
+ Days 2-10	(\$975.00) X (9 days)	= \$8,775.00
	<u>Multi-Day Base Gravity Penalty</u>	<u>= \$9,750.00</u>

Generally, the Division will not consider the following types of violations applicable to a multi-day penalty calculation:

- A. Failure to Submit Required/Requested Reports (Annual Reports, Permit Compliance Schedule Items, etc.)
- B. Failure to Maintain Required Records
- C. Other Administrative Violations

In these cases, the Division will likely impose a one-time base gravity penalty (*see example calculation below*).

Example Calculation:

For illustration, consider an owner/operator of a light industrial facility with 65 employees that has failed to submit an annual report by the February 15th deadline. The Division issued the facility a Notice of Violation/Cease and Desist Order (“NOV/CDO”) on May 15th of the same year and, in response to the NOV/CDO, the facility submitted its annual report on June 15th, 120 days past the permit-imposed deadline. The beneficial use classification of receiving waters is Aquatic Life-CL2 and potential harm has been determined to be Moderate. Assuming the owner/operator has no prior violation history and fault has been determined to be Category 2 (\$600 in this instance), from the Stormwater Base Gravity Penalty Value Tables found in Attachment B, the per day base gravity penalty amount is \$1,537.50 (Potential Damage + Fault + History). Without applying the multi-day factor, the base gravity penalty for this violation would be \$1,537.50.

Day 1	(\$1,537.50)	=	\$1,537.50
	Total Base Gravity Penalty	=	\$1,537.50

While this section provides general guidance on the Division’s use of multi-day penalties, nothing in this document precludes or should be construed to preclude the Division from assessing penalties of up to ten thousand dollars per day for each day during which such violation occurs. The Division may deviate from the above-described methodologies in circumstances where significant harm has in fact occurred and/or immediate compliance is required to avert or abate a continuing threat to public health or the environment.

V. MULTIPLE VIOLATIONS

In certain situations, the Division may find that a particular violator has violated several different State regulatory requirements. In these cases, a separate civil penalty can be sought for each separate violation that results from an independent act (or failure to act) by the violator and is substantially distinguishable from any other violation for which a penalty is to be assessed. A given violation is independent of, and substantially distinguishable from, any other violation when it requires an element of proof not required to establish another violation. Violations of different sections of the regulations would constitute independent and substantially distinguishable violations.

It is also possible that different violations of the same section of the regulations could constitute independent and substantially distinguishable counts of the same violation. In other words, if both violations arise from the same regulatory section, but each requires distinct elements of proof, two penalty counts with two separate penalties could be appropriate.

For stormwater penalty purposes, penalties for multiple violations will generally be addressed by increasing the actual or potential harm found in appendix B.

A violator's failure to satisfy one regulatory or permit requirement may violate numerous other independent regulatory requirements. For example, if a facility fails to obtain a stormwater discharge permit as required by regulation, and subsequently does not properly implement best management practices and conduct inspections of its storm water management system, the violator may violate numerous other regulatory/permit requirements. In cases such as this, where multiple violations result from a single initial failure, assessment of a separate penalty for each distinguishable violation may produce a total penalty that is disproportionate. Accordingly, enforcement personnel have discretion to forego separate penalties for certain distinguishable violations, so long as the total penalty for all related violations is appropriate (considering the gravity of the offense) and sufficient to deter similar future behavior and recoup any economic benefit as a result of the noncompliance.

VI. ABILITY TO PAY

The Division typically does not request penalties clearly beyond the means of a violator. However, if a violator either refuses to comply, has a long history of previous similar violations, or has committed egregious violations, the Division reserves the right to disregard, in part or whole, any ability to pay assertions.

The Division will consider further adjustment of an assessed civil penalty for ability to pay, if the violator demonstrates and documents that it has and will continue to have insufficient economic resources to pay the assessed penalty. The violator must submit the necessary information to the Division demonstrating actual inability to pay as opposed to unwillingness to pay. If the violator is unwilling to cooperate in demonstrating its inability to pay the penalty, further adjustment of the civil penalty will not be considered.

In evaluating ability to pay claims, the Division will generally utilize the Environmental Protection Agency's various financial models (ABEL, INDIPAY, and MUNIPAY). These models can be downloaded from the following Internet location:

<http://www.epa.gov/compliance/civil/econmodels/index.html>

If a violator has demonstrated to the satisfaction of the Division that it cannot afford the civil penalty prescribed by this policy, or that payment of all or a portion of the penalty will preclude the violator from achieving compliance or from carrying out activities which the Division deems to be more important than the deterrence effect of the penalty (e.g., payment of penalty would preclude development of a SWMP and implementation of proper BMPs), the Division will consider the following options in the order presented:

- A. Consider an installment payment plan with or without interest;
- B. Consider a delayed payment schedule with or without interest;
- C. If a payment schedule will not resolve the violator's ability to pay issue, as a last recourse, the Division may reduce the amount it seeks to a more appropriate amount in situations in which the inability to pay can be clearly documented and reasonably quantified. This adjustment should only reduce the penalty to the highest penalty amount that the violator can reasonably pay while also complying with the stormwater management requirements.

VII. RESERVATION OF RIGHTS

The Division, at its discretion, reserves the right to deviate from the above methodology in situations where the calculated penalty does not properly reflect the potential public health or environmental impacts of the case specific facts, such as in a situation where actual public or environmental harm has occurred. In these cases the Division may develop a written narrative justifying the appropriate penalty amount. However, in no case will the civil penalty amount exceed the statutory maximum of ten thousand dollars per day for each day during which such violation occurred.

Attachment A

STORMWATER PENALTY COMPUTATION WORKSHEET

System Name: <i>[Entity Name]</i>	Permit Number: <i>COR-XXXXXX</i>
--	---

Beneficial Use Classification:	Date of NOV/CDO: <i>[Date]</i> Number: <i>SO-0XXXXX-X</i>
---------------------------------------	--

Type of Facility: <i>[Type]</i>	Disturbed Acres: Number of Employees:
--	--

Part I – Base Penalty Calculation

A. Potential Damage Component

	Violation Type	Adjustment	Amount in Dollars
Line 1	Conducting Covered Activity Without A Stormwater Permit		\$0.00
	<i>Adjustment Justification:</i>		
Line 2	Failure to Prepare Stormwater Management Plan (SWMP)		\$0.00
	<i>Adjustment Justification:</i>		
Line 3	Deficient Stormwater Management Plan (SWMP)		\$0.00
	<i>Adjustment Justification:</i>		
Line 4	Failure to Install, Maintain or Properly Select Best Management Practices		\$0.00
	<i>Adjustment Justification:</i>		
Line 5	Failure to Perform Inspections of Stormwater Management System		\$0.00
	<i>Adjustment Justification:</i>		
Line 6	Failure to Submit Required/ Requested Reports (Annual Reports, Permit Compliance Schedule Items, Etc.)		\$0.00
	<i>Adjustment Justification:</i>		
Line 7	Failure to Maintain Required Records		\$0.00
	<i>Adjustment Justification:</i>		
Line 8	Pollution, Contamination or Degradation of State Waters		\$0.00
	<i>Adjustment Justification:</i>		
Line 9	Other Administrative Violations		\$0.00
	<i>Adjustment Justification:</i>		
Line 10	Potential Damage Total (Sum of Lines 1 through 9)	<i>(Not to exceed \$6000/day)</i>	\$0.00

Attachment A

B. Fault Component

			Amount in Dollars
Line 11	Fault: Category X	<i>(Not to exceed \$3000/day)</i>	\$0.00
	<i>Justification:</i>		

C. History Component

			Amount in Dollars
Line 12	History: Category X	<i>(Not to exceed \$1000/day)</i>	\$0.00
	<i>Justification:</i>		

Part II – Determination of Days of Violation

			Days of Violation
Line 13	Total Days of Violation		
	<i>Justification:</i>		

Part III – Determination of Multi-Day Penalty Amount

			Amount in Dollars
Line 14	Multi-Day Penalty Amount		\$0.00
	<i>Calculations:</i>		

Part IV – Base Penalty Total

			Amount in Dollars
Line 15	Base Penalty = Potential Damage + Fault + History (Sum of Line 10 + Line 11 + Line 12, OR Line 14)		\$0.00

Attachment A

Part V – Application of Aggravating or Mitigating Factors

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 16	Factor A: Voluntary and Complete Disclosure of Violations <i>Justification:</i>	0%	\$0.00
Line 17	Factor B: Full and Prompt Cooperation <i>Justification:</i>	0%	\$0.00
Line 18	Factor C: Environmental Compliance Program <i>Justification:</i>	0%	\$0.00
Line 19	Factor D: Intentional, Reckless or Negligent Violations <i>Justification:</i>	0%	\$0.00
Line 20	Factor E: Other Aggravating or Mitigating Circumstances <i>Justification:</i>	0%	\$0.00
Line 21	Sum of Line 16 through Line 20		+/- \$0.00
Line 22	Adjusted Base Penalty (Sum of Line 15 + Line 21)		\$0.00

Part VI– Economic Benefit Consideration

		Amount in Dollars
Line 23	Economic Benefit <i>Justification:</i>	\$0.00

Part VII – Violation Penalty Total

		Amount in Dollars
Line 24	Civil Penalty: (Sum Line 22 + Line 23)	\$0.00

Attachment A

Part VIII – Ability to Pay Adjustment

			Amount in Dollars
Line 25	Ability to Pay Reduction:		\$0.00
	<i>Justification:</i>		

Part IX – Final Adjusted Penalty

			Amount in Dollars
Line 26	Total Civil Penalty: (Sum Line 24 + Line 25)		\$0.00

Attachment B
Water Quality Control Division
Stormwater - Base Gravity Penalty Value Tables

TABLE 1 – POTENTIAL DAMAGE COMPONENT						
Facility/ Permit Type	Industrial	Sand & Gravel	Light or Metal Mining	Heavy or Recycling		
	Construction (Size in Disturbed Acres)	0-10	11-25	26-50	51-100	>100
Violation Type	Conducting Covered Activity Without A Stormwater Permit _{1,3}	\$200	\$350	\$500	\$1000	\$1500
	Failure to Prepare Stormwater Management Plan (SWMP) ₁	\$200	\$350	\$500	\$1000	\$1500
	Deficient Stormwater Management Plan (SWMP) ₁	\$100	\$200	\$300	\$400	\$500
	Failure to Install, Maintain or Properly Select Best Management Practices ₁	\$500	\$750	\$1000	\$2000	\$3000
	Failure to Perform Inspections of Stormwater Management System ₁	\$150	\$300	\$600	\$1200	\$2400
	Pollution, Contamination or Degradation of State Waters ₁	\$500	\$750	\$1000	\$2000	\$3000
	Failure to Submit Required/Requested Reports (Annual Reports, Permit Compliance Schedule Items, etc.) ₂	\$500	\$750	\$1000	\$2000	\$3000
	Failure to Maintain Required Records ₂	\$500	\$750	\$1000	\$2000	\$3000
	Other Administrative Violations ₂	\$200	\$400	\$600	\$800	\$1000

Footnote₁ – Per day of violation

Footnote₂ – Single amount

Footnote₃ – Penalties for violations under this category may be aggravated for sites that fail to develop and/or implement functional stormwater management systems.

Attachment B
 Water Quality Control Division
Stormwater - Base Gravity Penalty Value Tables

TABLE 2 – POTENTIAL DAMAGE COMPONENT (Use/Harm Adjustments)	Actual or Potential Harm to Public Health or the Environment *				
Receiving Water Beneficial Use Classification	Minor	Minor/ Moderate	Moderate	Moderate/ Major	Major
Agricultural	-25%	-10%	+0%	+10%	+20%
Recreation – CL2	-10%	-5%	+5%	+15%	+25%
Recreation – CL1	-5%	+0%	+10%	+20%	+30%
Aquatic Life – CL2	+0%	+10%	+25%	+50%	+75%
Water Supply	+5%	+20%	+35%	+60%	+90%
Wetlands	+10%	+25%	+50%	+75%	+100%
Aquatic Life – CL1	+25%	+50%	+75%	+100%	+200%

** (Considering, but not Limited to: Proximity to Surface Water, Contaminant Type, Quantity of Pollutants, Sensitive Species or Habitat, 303d Listed Segments, Precipitation Data, Number of Counts of Violation)*

Attachment B
 Water Quality Control Division
Stormwater - Base Gravity Penalty Value Tables

TABLE 3 – FAULT COMPONENT						
Facility/ Permit Type	Industrial (Number of Employees)	0-5	6-20	21-50	51-100	> 100
	Construction (Size in Disturbed Acres)	0-10	11-25	26-50	51-100	>100
Fault Category	Category 1 – Any situation where the violator could not reasonably have been expected to be aware of the circumstances that led to the violation(s).	\$0- \$200	\$201- \$400	\$401 - \$600	\$601- \$800	\$801- \$1000
	Category 2 – Any situation where the violator should have been aware of circumstances which led to the violation(s) or where a delay in the completion of physical or operational improvement was beyond the control or means of the violator.	\$201- \$400	\$401- \$800	\$801 - \$1200	\$1201- \$1600	\$1601- \$2000
	Category 3 – Any case where the violator was aware of the circumstances that led to the violation(s) and failed to take the necessary steps to prevent it. Situations where the violator had specific information (Division inspection report, internal communications, engineering studies, etc.) that violation was imminent and did not take steps to prevent it would fall into this category.	\$401- \$600	\$601- \$1200	\$1201- \$1800	\$1801- \$2400	\$2401- \$3000

Attachment B
Water Quality Control Division
Stormwater - Base Gravity Penalty Value Tables

TABLE 4 – HISTORY COMPONENT						
Facility/ Permit Type	Industrial (Number of Employees)	0-5	6-20	21-50	51-100	> 100
	Construction (Size in Disturbed Acres)	0-10	11-25	26-50	51-100	>100
History Category	Category 1 – Previous NOV issued for one or more violation(s) cited in the current NOV within three years of the date of issuance of the current NOV. This category applies where the violator did not substantially comply with a final condition of the previous NOV or a superceding consent agreement.	\$200	\$400	\$600	\$800	\$1000
	Category 2 – Previous NOV issued for one or more violation(s) cited in the current NOV, within three years of the date of issuance of the current NOV.	\$160	\$320	\$480	\$640	\$800
	Category 3 – Previous NOV issued for violation(s), other than those cited in the current NOV, within three years of the date of issuance of the current NOV. This category applies where the violator did not substantially comply with a final condition of the previous NOV or a superceding consent agreement.	\$120	\$240	\$360	\$480	\$600
	Category 4 – Previous NOV issued for one or more violations, other than those cited in the current NOV, within three years of the date of issuance of the current NOV.	\$80	\$160	\$240	\$320	\$400
	Category 5 – Any violation(s) during the previous five years, other than those cited in the current NOV, which has been documented in some written form (e.g. inspection report, compliance advisory).	\$40	\$80	\$120	\$160	\$200

Attachment C

**Water Quality Control Division
Stormwater - Administrative Base Gravity Penalty
Aggravating and Mitigating Factors**

The following factors are deemed by the Division to be pertinent to all administrative penalties calculated for violations of the *Stormwater Program Requirements*:

Factor A: Voluntary and Complete Disclosure of Violations – The voluntary and complete disclosure, by a violator, of violations in a timely fashion after discovery and prior to the Division’s knowledge of the violation, provided that all reports/notifications required pursuant to the Stormwater Permit/Regulations have been submitted as and when otherwise required. To be voluntary, the disclosure must not be required by any statute, regulation, order, permit, or other legal requirement.

If an Owner/Operator discovers a violation, prior to the Division’s knowledge of the violation, promptly notifies the Division about such a violation, and gives a voluntary and complete disclosure detailing the violation, the base penalty may be reduced from 10 to 50%.

(Voluntary disclosures originating from voluntary self-evaluations may be applicable to the penalty immunity provisions of the Colorado Environmental Audit Privilege and Immunity Law codified in §§ 25-1-114.5 and 25-1-114.6 of the Colorado Revised Statutes.)

Factor B: Full and Prompt Cooperation – Full and prompt cooperation by the violator following identification of a violation including, when appropriate, entering into in good faith and implementing a legally enforceable agreement to undertake compliance and remedial activities:

If, following disclosure (by the violator) or discovery (by the Division) of a violation, the violator acts fully and cooperatively with the Division to resolve all issues surrounding its non-compliance and any related remedial activities required to protect public health, the base penalty may be reduced from 5 to 25%.

To obtain the benefit of this factor, the violator may also be required to fully and cooperatively enter into a legally enforceable agreement relating to compliance and remedial efforts, if deemed appropriate. A legally enforceable agreement may include a stipulated penalty for future violations.

If, following disclosure (by the violator) or discovery (by the Division) of a violation, the violator fails to act fully and cooperatively with the Division to resolve all issues surrounding its non-compliance and any related remedial activities required to protect public health, the base penalty may be increased from 5 to 25%.

Attachment C

**Water Quality Control Division
Stormwater - Administrative Base Gravity Penalty
Aggravating and Mitigating Factors**

Factor C: Regularized and Comprehensive Environmental Compliance Program – The existence of a regularized and comprehensive environmental compliance/audit program that was adopted in a timely, good faith manner and that includes sufficient measures to identify and prevent future non-compliance:

An environmental compliance/audit program is designed to ensure that violators know about and satisfy all environmental regulatory requirements. Such a program should include documents, written procedures, a recognized authority within the organization, and assigned personnel whose purpose is monitoring and maintaining compliance with applicable environmental requirements. An audit program would be a program that evaluates the Owner/Operator's operations on a routine basis to determine compliance with the regulatory requirements.

If a violator demonstrates to the Division's satisfaction that it has implemented an environmental compliance/audit program, the Division may reduce the base penalty from 5 to 25%.

Factor D: Intentional, Reckless or Negligent Violations – Whether a violation was caused by an intentional, reckless or negligent act of a violator. If the Division determines that a violation was intentional, reckless or negligent, the base penalty may be increased from 5 to 100%.

Factor E: Other Aggravating or Mitigating Circumstances – Any other aggravating or mitigating circumstances the Division deems relevant shall be considered. The amount of increase or reduction of the base penalty amount shall be determined by the Division on a case-by-case basis.

The application of the above factors may increase or decrease the base gravity penalty dependant on case specific facts. In no case shall a base penalty be reduced by more than 100% or increased beyond the statutory per day penalty maximum.