

**COLORADO DEPARTMENT OF PUBLIC HEALTH  
AND ENVIRONMENT**

**WATER QUALITY CONTROL DIVISION**



**CLEAN WATER PROGRAM**

**ENFORCEMENT MANAGEMENT SYSTEM**

May 1, 2016

## Table of Contents

GLOSSARY OF ACRONYMS.....	3
<b>I. INTRODUCTION.....</b>	<b>4</b>
<b>II. COMPLIANCE / ENFORCEMENT ROLES.....</b>	<b>5</b>
A. Colorado Water Quality Control Commission.....	5
B. Water and Wastewater Facility Operators Certification Board.....	6
C. Water Quality Control Division.....	6
D. Colorado Attorney General’s Office.....	9
<b>III. INFORMATION MANAGEMENT.....</b>	<b>9</b>
<b>IV. COMPLIANCE MONITORING AND VIOLATION REVIEW.....</b>	<b>14</b>
A. Self-Reported Data.....	14
1. Discharge Monitoring Reports (DMRs).....	14
2. Whole Effluent Toxicity (WET) Automatic Compliance Response.....	15
3. Compliance Schedules and Narrative Conditions.....	15
4. Certified Operator in Responsible Charge Information.....	15
5. Spill Reports and Noncompliance Notifications.....	16
6. Natural Swimming Area Data.....	16
B. Field Inspections and Investigations.....	16
<b>V. ENFORCEMENT RESPONSE.....</b>	<b>17</b>
A. Enforcement Evaluation.....	17
Significant Non-Compliance (SNC).....	17
Quarterly Non-Compliance Report (QNCR).....	20
B. Range of Enforcement Responses.....	20
C. Use of the Enforcement Response Guides.....	21
COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE.....	22
D. Formal Enforcement Actions.....	52
1. Administrative Enforcement Actions.....	52
2. Civil Enforcement Actions.....	54
3. Criminal Enforcement Actions.....	55
EXHIBIT A - CONVENTIONAL AND TOXIC POLLUTANTS.....	56
EXHIBIT B - CIVIL PENALTY POLICIES.....	57

## GLOSSARY OF ACRONYMS

AGO	Attorney General's Office
AFO	Animal Feeding Operation
BMP	Best Management Practice
CAFO	Concentrated Animal Feeding Operation
CDO	Cease and Desist Order
CDPS	Colorado Discharge Permit System
COC	Compliance Order on Consent
CUO	Clean-Up Order
DMR	Discharge Monitoring Report
EMS	Enforcement Management System
EPA	Environmental Protection Agency
ESA	Expedited Settlement Agreement
FMP	Facility Management Plan
HCSFO	Housed Commercial Swine Feeding Operation
ICIS	Integrated Compliance Information System
MOA	Memorandum of Agreement between EPA and the Water Quality Control Division
MS4	Municipal Separate Storm Sewer System
NetDMR	EPA's Network Discharge Monitoring Report system for electronic reporting of DMR data and information
NOV	Notice of Violation - a formal legal action
NMP	Nutrient Management Plan
ORC	Operator-in-Responsible Charge
PTIE	Preliminary Toxicity Identification Evaluation
QNCR	Quarterly Non-Compliance Report
SOP	Standard Operating Procedure
SNC	Significant Non-Compliance as defined at 40 CFR 123.45, Appendix A, or as additionally defined by the Water Quality Control Division
SWMP	Stormwater Management Plan in the context of stormwater permits <u>or</u> Swine Waste Management Plan in the context of Housed Commercial Swine Feeding Operation permits
TIE	Toxicity Identification Evaluation
TRE	Toxicity Reduction Evaluation
WET	Whole Effluent Toxicity

## I. INTRODUCTION

The purpose of this enforcement management system (EMS) is to describe the compliance monitoring and enforcement procedures of the Water Quality Control Division (Division) as it relates to the implementation of the Water Quality Control Act (Act), §§25-8-101 to 803, C.R.S., and the wastewater portions of the Water and Wastewater Facility Operators Certification Statute (ORC Statute), §§25-9-101 to 110, C.R.S. The responsibility for these compliance monitoring and enforcement duties is housed within the Division's Clean Water Program.

In 1986, The U. S. Environmental Protection Agency (EPA) published "*The Enforcement Management System, National Pollutant Discharge Elimination System (Clean Water Act)*" with a requirement that all administering agencies have a written enforcement management system consistent with the principles of the federal EMS. On May 1, 1993, the Division published its original EMS. This revised version of the Division's EMS remains consistent with the principles of the 1986 federal EMS, carries over the principles of the Division's 1993 EMS, and includes updates made necessary by organizational, statutory, regulatory, and operational changes.

The principal objectives of this EMS document are to provide the participants in compliance monitoring and enforcement activities with (1) an understanding of EMS basic principles and their implementation in Colorado, (2) a description of the various roles and responsibilities of in the Division's compliance monitoring and enforcement activities, and (3) detailed guidance on procedures, responsibilities and time control goals for compliance monitoring and enforcement activities in Colorado. Implementation of the principles and processes outlined in this EMS are intended to result in an effective, consistent, and fair approach to addressing compliance issues at facilities that discharge, or have the potential to discharge, to waters of the state. This document describes the compliance monitoring, data management, enforcement escalation, and formal enforcement processes and procedures of the Division, which translate into timely and appropriate enforcement actions to address instances of significant noncompliance by regulated entities.

The procedures are established in such a manner to allow the Division to comprehensively and accurately evaluate and address noncompliance problems in an efficient and consistent manner. The documentation and implementation of these procedures allows the Division to:

- Ensure the application of a fair and consistent compliance oversight and enforcement response;
- More efficiently utilize existing resources;
- Train new employees; and
- Effectively carry out the Division's compliance monitoring and enforcement responsibilities.

While this EMS remains consistent with the EPA prescribed "Basic Principles," it was in large part developed to allow flexibility to deal with circumstances unique to the state.

Seven fundamental activities are generally recognized as necessary for an effective enforcement program. These activities were included in the Division's 1993 EMS and are continued here. They are:

- Maintain a complete, accurate information base;
- Assure a systematic flow of compliance information;
- Review compliance monitoring information on a consistent basis using established criteria;
- Initiate routine and special field inspections to monitor compliance status;
- Perform enforcement evaluation to determine an appropriate response;
- Initiate informal and formal enforcement action and follow-up as necessary; and
- Use information management systems to provide adequate enforcement information to all levels of the organization.

## II. COMPLIANCE / ENFORCEMENT ROLES

Compliance monitoring and enforcement of the Act, Colorado Discharge Permit System (CDPS) permit requirements, control regulations promulgated pursuant to the Act, and the wastewater portions of the ORC Statute and its implementing regulation are the responsibility of the Division and are implemented through the Division's Clean Water Program. EPA provides oversight of the CDPS permitting program by reviewing Division permits, inspections, enforcement actions, and penalty assessments in order to ensure the program is administered in accordance with delegation agreements, national goals, and policies.

State compliance and enforcement roles are discussed below.

### A. Colorado Water Quality Control Commission

The Colorado Water Quality Control Commission (Commission) was created by state statute (§25-8-201, C.R.S.) and consists of nine members appointed by the governor with the confirmation of the senate. The Commission is made up of members representing various interests and serving three-year terms.

The Commission is authorized by the Act to "develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state..." The Commission holds hearings in each of the state's major river basins to set water quality use classifications and standards, and develops regulations to ensure protection of those uses and standards. The Commission has the responsibility to promulgate water quality standards, control regulations, and permit regulations for discharges into state waters. The Commission is designated as the state water pollution control agency for Colorado for the federal Clean Water Act and is authorized to take all action necessary and appropriate to secure the benefits of the Act.

The Commission also serves as the hearing body for appeals of final determinations of the Division on notices of alleged violations and appeals of civil penalties assessed by the executive director of the Colorado Department of Public Health and Environment or his/her designee, with the exception of alleged violations and penalties associated with (1) surface water discharge permits or portions thereof, (2) discharging to surface waters without a permit, or (3) engaging in activities without a surface water discharge permit when such a permit is required. In these cases, the Division and Department of Public Health & Environment serve as the appellate body.

B. Water and Wastewater Facility Operators Certification Board

The Colorado Water and Wastewater Facility Operators Certification Board (Board) maintains a program for the certification of operators of municipal and industrial wastewater treatment plants and wastewater collection systems in order to assure protection of public health and the environment. The Board also serves as the hearing body for appeals of operator certification notices of alleged violations issued by the Division and appeals of penalties assessed by the executive director of the Department of Public Health & Environment or his/her designee for violations of the operator certification requirements.

C. Water Quality Control Division

The Division is responsible for the administration of the CDPS permitting framework, which includes the CDPS permit regulations at 5 CCR 1002-61. This responsibility is delegated to the Division in accordance with §§25-8-301 and 302, C.R.S. The Division has responsibility for issuance, denial, modification, revocation and enforcement of CDPS permits. The Division acts independently of the Commission in matters related to CDPS permitting and enforcement. The Division also has responsibility for oversight and enforcement of other provisions of the Act, control regulations promulgated pursuant to the Act, and certain provisions of the ORC Statute and its implementing regulation.

Compliance assurance and enforcement responsibilities are dispersed among work units within the Division that handle permitting, field inspections, compliance oversight and enforcement, engineering design review, grants and loans management, and data management, as further described in Commission Policy 98-2. The managers and staff of these work units are assigned the following responsibilities (including but not limited to):

- Permitting - Developing and issuing permits, including CDPS permits and control regulation authorizations, that contain appropriate terms and conditions to protect water quality in accordance with state and federal regulations. These terms and conditions may include, but are not limited to, effluent limitations, compliance schedule requirements, operation and maintenance obligations, and monitoring, record keeping, and reporting requirements. Duties involved with permitting duties may include:
  - Assisting in the review of permit compliance schedule submittals.

- Assisting in the maintenance of permit information and data in the federal Integrated Compliance Information System (ICIS), including ensuring that appropriate limits and permit-imposed compliance schedule requirements are entered and tracked.
- Providing compliance assistance to aid operators in achieving and maintaining compliance with CDPS permit requirements.
- Field inspections - Conducting oversight to determine compliance with permit conditions and the requirements of applicable water quality statutes and regulations. Duties involved with field services and inspections may include:
  - Conducting facility inspections.
  - Responding to reports (e.g., citizen complaints, EPA notifications, intra-Division information) of activities that may threaten water quality or which may be in violation of state or federal water quality statutes and regulations (e.g., spills, illegal discharges).
  - Collecting samples.
  - Preparing and sending inspection reports and compliance advisories related to field-identified findings.
  - Transmitting information and recommendations to enforcement staff for evaluation of the appropriate enforcement response to incidents of significant noncompliance.
  - Managing and/or assisting in the maintenance of inspection information and field-identified violation data in ICIS.
  - Providing compliance assistance to aid entities in achieving and maintaining compliance.
- Compliance oversight and enforcement - Monitoring self-reported data and other information from permitted facilities (e.g., Discharge Monitoring Reports, annual reports, compliance schedule submittals) and following up with informal and formal enforcement responses for instances of identified noncompliance. Duties involved with compliance oversight and enforcement may include:
  - Ensuring compliance information is submitted by regulated entities on time and that the information is complete and accurate.
  - Reviewing and evaluating effluent data, compliance schedule information, and other compliance requirements.

- Initiating appropriate enforcement follow-up for identified noncompliance, including preparing and sending compliance advisories and notices of significant noncompliance as well as formal notices of violation, cease and desist orders, clean-up orders, expedited settlement agreements, compliance orders on consent, and orders for civil penalty.
- Tracking the effectiveness of informal and formal enforcement in correcting the noncompliance.
- Negotiating settlement agreements and return to compliance activities.
- Managing and assisting in the maintenance of enforcement data and self-reported violation data in ICIS.
- Providing compliance assistance to aid entities in achieving and maintaining compliance.
- Engineering design review - Reviewing and approving site location and engineering design documents for new domestic wastewater treatment works and planned alterations to existing domestic wastewater treatment works. Duties involved with engineering oversight and review may include:
  - Classifying wastewater treatment and collection systems based on the complexity and size of those systems in accordance with the ORC Statute and its implementing regulation.
  - Assisting with and providing engineering evaluations in support of informal and formal enforcement actions.
  - Assisting in the review of permit compliance schedule submittals, when necessary.
  - Performing engineering reviews in support of the grants and loans distribution process.
  - Managing and assisting in the maintenance of site location approval, design approval, and facility classification data in internal data systems and ICIS.
  - Providing compliance assistance to aid entities in achieving and maintaining compliance.
- Grants and loans management - Works with entities to assist in the project development phase, which includes the identification of potential financing opportunities. Reviewing requests for financial assistance and manages the distribution of grants and loans for projects that result in improvements to domestic wastewater treatment works and water quality throughout the state, including administering grants from penalty dollars collected and deposited in the state's Water Quality Improvement Fund pursuant to §25-

8-608, C.R.S. Duties involved with grants and loans management may include providing assistance to domestic wastewater treatment systems that have financial constraints but need treatment upgrades in order to consistently meet the requirements of CDPS permits.

- Data management - Entering and managing permit, discharge monitoring, compliance, inspection, enforcement and facility classification data and information in ICIS. Reviews permits and application documents to ensure that all ICIS required data elements are collected and entered. Duties involved with data management may include creating inventory and compliance reports/queries from ICIS.
- Administrative services - Assisting with mailing, billing, records management and other administrative services.

#### D. Colorado Attorney General's Office

The Attorney General's Office (AGO) acts as legal counsel for the Commission, the Board, and the Division. The AGO performs a number of activities including:

- Periodically reviewing formal enforcement actions to ensure legal consistency;
- Filing complaints in district court on behalf of the Division;
- Providing legal representation for the Division in evidentiary hearings, in district court, and in appeals from those proceedings;
- Assisting in negotiation of settlements in permitting and enforcement actions, as necessary;
- Assisting the Division in determining the legal validity of terms and conditions of permits and in the interpretation of applicable statutes and regulations; and
- Providing other legal advice as needed.

### III. INFORMATION MANAGEMENT

Information management describes the processes by which the Division monitors and evaluates progress in identifying and dealing with instances of noncompliance. Through the use of specific reporting tools or systems, compliance monitoring and enforcement activities are tracked and assessed. By focusing on specific management objectives and procedures, there is assurance that compliance monitoring and enforcement program activities are evaluated in terms of their quality, timeliness, results, and accomplishment of objectives.

#### A. Information Base

The foundation of the Division's compliance tracking and enforcement system is a complete and accurate information base, which is essentially an inventory of pertinent data on all permits, regulated entities/facilities, and known unpermitted activities and facilities. The information base is generally built upon the permit (where applicable), which authorizes an entity to discharge to state waters, or conduct other activities in accordance with a control regulation, and which contains essential

information on the facility. Inventory information, permit applications, analytical data, correspondence to/from the facility, complaints, inspection records, enforcement actions, public notice documents and facility design submittals are all types of documents that may be included in the information base, or administrative record, for a facility. Every Division staff member who interacts with a discharger has the responsibility to create and manage the administrative record for the facility.

In Colorado, information on regulated entities is maintained as follows:

1. Hardcopy and Electronic Files

Permitting documents, correspondence, Discharge Monitoring Reports (DMRs), whole effluent toxicity (WET) reports, municipal and industrial pretreatment information, inspection reports, and other general operation and performance reports and documents are maintained in hardcopy and electronic files centralized in the Division's Records Center. A separate working enforcement file may also be maintained by the enforcement specialist, as necessary. Collectively, these records are managed in accordance with Division records policies and records disposition schedules.

2. Integrated Compliance Information System (ICIS)

ICIS is a federal computer database management system designed to store National Pollutant Discharge Elimination System permit data and information, including CDPS permit, compliance and enforcement data. ICIS not only supports the compliance monitoring activities of the Division, it also provides a uniform means of data sharing between the Division and EPA. Self-reported data from permitted facilities, such as permit-required pollutant concentration data, is maintained and tracked in ICIS. The Division also utilizes ICIS to enter and track permit narrative conditions and permit compliance schedule requirements, as well as enforcement actions and their associated compliance schedules. The Division's goal is to have all permit and compliance/enforcement data maintained and tracked in ICIS.

3. Other Information Sources - Until such time as all compliance and enforcement data is maintained in ICIS, individual work units and sections that perform compliance oversight activities may track and maintain certain compliance information outside of ICIS utilizing alternative tracking tools, such as spreadsheets or workflow and management software (e.g., Sharepoint). The standards and procedures for the maintenance and tracking of this information are determined through unit/section specific business processes and Division records policies that are separate from this EMS.

B. Flow of Information

Flow of information describes the orderly movement of various compliance monitoring/enforcement information as it passes from initial receipt, through review and decision points, to final resolution or deposition. The procedures and time frames identified in this systematic flow path provide assurance that: 1) legally-required compliance information is processed in a consistent and timely manner and 2) pertinent data can be readily located and accessed at appropriate points in the

decision-making process. Having data on discharges current and readily accessible to all parties (e.g., state, EPA, public interest groups and citizens) facilitates cooperation in carrying out the Division's compliance and enforcement responsibilities.

In general, information concerning permit issuance, modification, termination, and applications is routed through the work units that perform permitting activities. Work units involved in compliance oversight (including field services and inspections) carry out the majority of the activities related to compliance information review and enforcement follow-up and, therefore, create, access, and receive data and information on discharge permit compliance and wastewater treatment facility performance. Data entry and records management staff is involved throughout the permitting and compliance oversight processes to help ensure information is consolidated and accessible for timely and efficient response to the information. Other important types of information include engineering design documents, as well as applications and supporting documentation for grants and loans to improve treatment facility performance and statewide water quality.

The basic information flow scheme for compliance monitoring reports and correspondence requiring action is presented in the following tables. Procedures and time controls pertaining to specific enforcement response activities are discussed in the Enforcement Response Guides in Section V.C. [below](#).

**TABLE I  
FLOW OF INFORMATION  
COMPLIANCE MONITORING REPORTS**

<b>INFORMATION*</b>	<b>ROUTED TO</b>	<b>TIME CONTROL GOAL (DAYS)**</b>	<b>ACTION REQUIRED</b>	<b>STORAGE</b>
DMRs	Records Center	5	Scan to electronic format and upload to electronic file	Electronic File
	Data management	10	Data entry in ICIS	ICIS (data)
	Compliance and enforcement <sup>1</sup>	45, or as identified in sector work plans	Compliance screen; Enforcement follow-up if necessary	
Permit Compliance Schedule/Narrative Conditions Submittal (includes Annual Reports)	Data management	15	Receipt entered in ICIS	ICIS (data)
	Compliance and enforcement	45, or as identified in sector work plans	Compliance screen; Enforcement follow-up if necessary	
	Records Center	60	Filing	Electronic or hardcopy file
WET reports	Compliance and enforcement	10	Compliance screen; Enforcement follow-up if necessary	
	Records Center	30	Filing	Electronic or hardcopy file
Certified Operator Information	Records Center	5	Scan to electronic format and upload to electronic file	Electronic file
	Permitting	10	Data entry in Sharepoint	Sharepoint
	Data management	15	Data entry in ICIS	ICIS (data)
	Compliance and enforcement <sup>1</sup>	90	Compliance screen; Enforcement follow-up if necessary	
Natural Swimming Area Data	Compliance and enforcement	5	Compliance screen; Enforcement follow-up if necessary	
	Records Center	30	Filing	Electronic or Hardcopy file
Inspection Reports	Inspections	45, or as identified in sector work plans	Preparation and review of inspection reports, forward for ICIS entry	Electronic or harcopy file
	Data management	5	Data entry in ICIS	ICIS (data)
	Records Center		Filing	Electronic or hardcopy file
	Compliance and enforcement	180	Enforcement follow-up if necessary	

\* These sources of information are further described in Section IV.A.

\*\* Number of days after receipt of correspondence

<sup>1</sup> Physical routing is not performed, as data is accessed and reviewed in ICIS

TABLE 2  
FLOW OF INFORMATION  
TELEPHONE REPORTS AND CORRESPONDENCE REQUIRING ACTION

INFORMATION	ROUTED TO	TIME CONTROL GOAL**	ACTION REQUIRED	STORAGE
Colorado Open Records Act requests	Records Center	1	Consult w/AGO and make records available for review	Electronic or hardcopy file
Citizen complaints	Inspections <sup>2</sup>	7	Initial investigation. Additional response dependent upon specifics of complaint	
	Records Center	10	Filing	Electronic or Hardcopy file
Initial notification of spill or bypass	Office of Emergency Preparedness and Response (i.e. spill hotline) <sup>3</sup>	1		
	Inspections	5	Investigate as appropriate	Department database; significant Single Event Violations entered in ICIS.
Written follow-up report to spill or bypass	Inspections <sup>3</sup>	3	Review and respond as appropriate	
	Records Center	10	Filing	Electronic or hardcopy file
Verbal permit noncompliance notification	Compliance and enforcement	3	Review and respond as appropriate	
Written permit noncompliance notification	Compliance and enforcement	3	Review and respond as appropriate	
	Records Center	10	Filing	Electronic or hardcopy file

\*\* Number of days after receipt of correspondence

<sup>2</sup> The specific list of contacts for calls/e-mails/complaints for various sectors is maintained outside of this EMS

<sup>3</sup> Telephone calls and correspondence initially reporting spills is routed to the Office of Emergency Preparedness and Response for coordination across all environmental divisions within the Department of Public Health & Environment

#### IV. COMPLIANCE MONITORING AND VIOLATION REVIEW

The Division performs monitoring of various sources of compliance information in order to evaluate the performance of facilities and identify continuing or serious noncompliance. It is important to note that compliance monitoring is a detection process. Evaluation for, and determination of, appropriate follow-up enforcement action occurs later during the enforcement evaluation process.

##### A. Self-Reported Data

Self-reported data refers to the numerical monitoring data, responses to compliance schedules and permit narrative conditions requirements, and other information submitted to the Division by a regulated entity. These entities are often required to collect water samples, conduct chemical and/or biological testing, and submit the results to the Division according to schedules established in regulation or a permit. The Division relies on entities to “self-report” accurate analytical results and other information as the foundation for determining if entities are meeting the requirements of their discharge permits. If entities do not report the results of chemical and/or biological testing, or other required information, the Division cannot efficiently and effectively determine whether the regulated entities are complying with their permits, thereby, protecting the beneficial uses of Colorado’s state waters from pollutant discharges that may cause or contribute to public health and water quality impacts. Furthermore, the public’s ability to access information regarding the impacts of pollutant discharges on state waters is severely limited or negated. Self-reported data includes, but is not limited to:

##### 1. Discharge Monitoring Reports (DMRs)

Many CDPS permitted facilities are required to monitor and report the quality of their effluent discharges via regularized DMR submittals. Some control regulations also include monitoring and reporting of water quality. Compliance screening of this data is performed by Division personnel responsible for compliance oversight and enforcement after the entry of the data into ICIS. The purpose of this activity is to identify instances of noncompliance with the effluent limitations and other monitoring requirements. The screening process should verify that DMRs are submitted on schedule, that the DMRs report activities for the proper time period, and that the DMRs include all required information.

DMR Data Entry - Until December 2016, permittees have the option of submitting paper DMRs to the Division or submitting their monitoring information electronically via the EPA’s Network DMR system (NetDMR). The monitoring information is then entered or uploaded to ICIS. **After December 2016, all permittees will be required to submit their monitoring information electronically via the EPA’s NetDMR system.**

When paper DMRs are received, Division staff responsible for data entry logs the date of receipt on the DMRs and an electronic record/copy of the DMRs is generated and maintained in the Division’s electronic files. The self-reported data on the DMRs is then entered into ICIS.

DMR Data Screening - Compliance and enforcement staff utilize ICIS to generate reports of noncompliance. The Division expects DMRs to be complete and accurate. The main focus of the review effort is to evaluate whether effluent data (and other monitoring data where applicable) is properly and completely reported, that effluent limitations are met, and that other narrative conditions associated with monitoring data are complied with. Effluent violations and violations for late, missing, and improperly completed DMRs are evaluated and follow-up is conducted in accordance with the Enforcement Response Guides in section V.C. [below](#).

## 2. Whole Effluent Toxicity (WET) Automatic Compliance Response

Some CDPS permits include requirements to conduct WET testing. In cases where toxicity is identified, CDPS permits require a timely investigation to identify the toxicant(s) and to eliminate, control, or otherwise address any identified toxicant(s) in a timely fashion. Compliance screening and tracking of WET testing information is performed by Division personnel responsible for compliance oversight and enforcement. Violations of WET testing requirements, including failures to implement or report the results of the automatic compliance response (i.e., investigation), are evaluated and follow-up is conducted in accordance with the Enforcement Response Guides in section V.C. [below](#).

## 3. Compliance Schedules and Narrative Conditions

CDPS permits and control regulations may include narrative conditions and/or compliance schedules that include requirements to perform specific actions and to submit reports and other information to the Division. Formal enforcement actions may also include compliance schedule requirements. Most narrative conditions that are associated with specific deadlines and/or compliance schedule requirements, including their deadlines, are entered into ICIS at the time a permit (or enforcement action) is issued. As these required reports and other information are received, their receipt is recorded in ICIS by data management staff and the information is reviewed for completeness and adequacy by the Division staff involved with compliance and enforcement activities. Violations for late, missing, and inadequate reports are evaluated and follow-up is conducted in accordance with the Enforcement Response Guides in section V.C. [below](#).

Some additional narrative conditions not associated with specific deadlines, or contained within control regulations, are not entered into ICIS. These requirements may be tracked outside of ICIS, or may be accessed only through inspections, as discussed in Part IV.B. [below](#).

## 4. Certified Operator in Responsible Charge Information

The ORC Statute and its implementing regulation require that every domestic or industrial wastewater treatment facility and wastewater collection system be under the supervision of a certified operator holding a certificate in a class equal to or higher than the class of the facility or system. Owners of these facilities/systems are required to submit to the Division, in writing, the name and operator identification number of the certified operator(s) in responsible charge for each facility/system. That information is entered in ICIS and is reviewed on a periodic basis by staff responsible for compliance and enforcement. Violations for

failing to have a certified operator in responsible charge with the appropriate certification are evaluated and follow-up is conducted in accordance with the Enforcement Response Guides in section V.C. [below](#).

#### 5. Spill Reports and Noncompliance Notifications

Section 25-8-601 of the Act requires that spills or discharges of oil or other substances that may cause pollution of state waters be reported to the Division. Spill reports are evaluated by staff responsible for field inspections and investigations and/or compliance and enforcement activities and follow-up is conducted, as necessary, to ensure the discharge event ceases and appropriate remediation activities are implemented.

CDPS permits and some control regulations include requirements that noncompliance with the terms and conditions of permits or control regulations be reported to the Division. These noncompliance notifications are reviewed by staff responsible for compliance and enforcement activities and follow-up is conducted, as applicable, in accordance with the Enforcement Response Guides in section V.C. [below](#).

#### 6. Natural Swimming Area Data

5 CCR 1003-5 requires natural swimming areas to monitor the bacteriological quality of water in the swimming area on a routine basis and report the results to the Division. Compliance and enforcement staff review natural swimming area data and provide oversight of the responsive actions taken by the natural swimming area when the maximum contaminant level for *E. coli* is exceeded.

### B. Field Inspections and Investigations

Inspections involve the methodical examination and review of regulated activities to ensure compliance with required activities. Inspections may include field review of information reported by the regulated entity, as well as other available information. Inspections are an important means of measuring compliance with regulations that protect public health and the environment. Inspectors evaluate facility compliance with permit conditions and statutory and regulatory requirements. Inspections often assist facilities in understanding those requirements. The level of inspection presence has a significant impact on compliance rates, as it increases knowledge in the regulated community that compliance inspections routinely occur. All significant findings require follow-up with the goal of obtaining correction of significant issues within time frames that protect water quality. Depending on the sector, follow up may include tracking resolution of significant issues, or placing expectations on the regulated entity for correction.

Inspection process and information is included in the division's annual Clean Water Program Facility Inspection Plan.

Violations identified through the inspection process are evaluated and follow-up is conducted in accordance with business processes for the Division's inspection activities, as well as the Enforcement Response Guides in section V.C. [below](#).

## V. ENFORCEMENT RESPONSE

The fundamental purpose of an enforcement response is to right a wrong (i.e., correct the noncompliance), to provide both specific and general deterrence of future violations by the subject entity and the regulated community as a whole, and to recover any economic benefit of the noncompliance. Generally accepted factors that are often considered in determining an appropriate enforcement response include, but are not limited to, the root cause of the violation, whether the violation was the result of negligence, the potential or actual harm to the environment, the risk to public health, the magnitude of the event, the economic benefit obtained through the violations, and the violator's response to the noncompliance.

### A. Enforcement Evaluation

Enforcement evaluation is the process whereby the violations and discrepancies that were identified during the compliance monitoring and inspection processes are reviewed to evaluate the type of enforcement response necessary or warranted. This review is generally conducted by staff responsible for compliance oversight and enforcement as well as field inspections and investigations. In determining the appropriate response, consideration is given, but not limited to:

- The nature of the violation(s);
- The duration of the violation(s);
- The frequency of the violation(s) (i.e., isolated or recurring);
- The potential impact on the environment as a result of the violation(s);
- The root cause of the violation, including whether negligence was involved;
- The economic benefit of the violation;
- The attitude of the violator; and
- The violator's compliance history.

### Significant Non-Compliance (SNC)

Part of the enforcement evaluation process includes a determination of whether the identified violations constitute "significant non-compliance" (SNC). The definitions of SNC are largely managed by EPA but the Division maintains the discretion to designate other types/levels of violations as SNC. Through the incorporation of the Code of Federal Regulations, various EPA enforcement policies, and Division enforcement policies<sup>4</sup> and practices, the Division considers the following violations to be SNC (including but not limited to):

#### **Numeric Effluent Limit Violations**

- Monthly Average Limits
  - A 40% exceedance of a conventional pollutant or 20% exceedance of a toxic pollutant effluent limit at the same outfall for two or more months during two consecutive quarter review periods. (See Exhibit A for a list of conventional and toxic pollutants)

---

<sup>4</sup> This revised EMS incorporates and thereby abolishes Division enforcement policies WQE-5, WQE-7, and WQE-8

- An exceedance of any monthly effluent limit at an outfall by any amount for four or more months during two consecutive quarter review periods.
- Non-Monthly Average Limits (e.g., maximum, minimum, 7-day average, 2-year average, etc.)
  - Same as monthly average limits, except when a parameter has both a monthly average and non-monthly average limit, a facility is considered in SNC for the non-monthly limit only if the monthly average is also violated to some degree (any degree).
  - For pH, an analytical result <4.0 or >11.0 at the same outfall for two or more months during two consecutive quarter review periods, or a pH value outside the permitted range at the same outfall for four or more months during two consecutive quarter review periods.
- Second Level SNC criteria for Major Dischargers
  - Three significant violations (40% exceedance of conventional pollutant, 20% exceedance of toxic pollutant, or pH <4.0 or >11.0) or six marginal violations (exceeds permit limit or outside pH range but less than significant) of a single pollutant parameter within a 15-month period.
  - Six significant violations (40% exceedance of conventional pollutant, 20% exceedance of toxic pollutant, or pH <4.0 or >11.0) or ten marginal violations (exceeds permit limit or outside pH range but less than significant) of any combination of pollutant parameters within a 15-month period.
- Other Effluent Violations
  - Any effluent violation that causes or has the potential to cause a water quality or human health problem.
  - *Note: The Division retains the discretion to deem other effluent violations as SNC.*

#### DMR Reporting Violations

- DMR not submitted or submitted 30 days or more late.
- *Note: The Division retains the discretion to deem other DMR reporting violations as SNC.*

#### Permit Compliance Schedule and Narrative Conditions Violations *(see below for additional narrative conditions violations related to stormwater, Animal Feeding Operations, and control regulation authorizations)*

- Any failure to start construction, end construction, initiate planning of treatment expansion, or attain final compliance within 90 days of the scheduled date.
- Any pretreatment schedule milestones missed by 90 days or more. Any pretreatment report or final report of progress (i.e., whether final compliance has been obtained) that is not submitted or is submitted 30 days or more late.
- Failure to submit required report or report is late by 90 days or more.

- Any failure to implement a WET automatic compliance response or submit a required WET report (e.g., TIE/TRE or corrective action plan/schedule) within 60 days of the scheduled data.
- *Note: The Division retains the discretion to deem other schedule violations as SNC.*

### Unpermitted Discharges

- Any unauthorized bypass, unpermitted discharge (including sanitary sewer overflows), or pass-through of pollutants which cause or has the potential to cause a water quality problem (e.g., fish kill, oil sheen) or human health problem (e.g., beach closure, fishing ban, or other restrictions of beneficial uses).
- Failure to report overflow or discharge event as required.
- Failure to submit required report or report is late by 30 days or more.

### Stormwater (associated with Industrial Activities) and MS4 Violations

- Any unpermitted discharge or operation without a stormwater permit when one is required.
- Significant violations of narrative permit requirements. Examples of such violations include, but are not limited to: lack of or substantially inadequate SWMP; substantial failure to implement or maintain control measures (e.g., BMPs); substantial failure to perform required monitoring (including self inspections); substantial failure to implement the MS4 requirements.
- Failure to submit required report or report is late by 90 days or more.
- Numeric effluent limit violations or DMR reporting violations that meet the criteria of SNC identified above.
- *Note: the Division retains the discretion to deem other violations as SNC.*

### Control Regulation Authorization Violations

- Any unpermitted discharge or operation without an authorization/notification as required by the applicable control regulation.
- Significant violations of narrative control regulation or authorization requirements. Examples of such violations include, but are not limited to: lack of or substantially inadequate implementation documentation; substantial failure to implement or maintain control measures; substantial failure to perform required monitoring (including self inspections).
- Failure to submit required report or report is late by 90 days or more.
- Numeric effluent limit violations or reporting violations that meet the criteria of SNC identified above.
- *Note: the Division retains the discretion to deem other violations as SNC.*

### Animal Feeding Operation (AFO), including Concentrated Animal Feeding Operation (CAFO) Violations

- Any unauthorized discharge.
- No Nutrient Monitoring Plan (NMP), Facility Management Plan (FMP), or other similar plan when one is required.

- Multiple violations of permit or regulatory requirements. For example, multiple deficiencies in implementing required plans, such as failure to: properly design impoundments; maintain adequate storage capacity and containment; implement buffer/setback requirements; properly manage chemicals and other contaminants; properly manage mortalities; conduct proper operation and maintenance; properly handle manure and process wastewater, including land application; test soils; meet record keeping requirements, etc.
- Failure to submit annual report or other required report, or report is late by 90 days or more.
- *Note: the Division retains the discretion to deem other violations as SNC.*

### Enforcement Action Violations

- Any violation of a formal enforcement action.

### Quarterly Non-Compliance Report (QNCR)

The QNCR is a report generated through ICIS specifically for permitted facilities designated as “majors” by EPA. It is used by the Division as an additional tool to track major dischargers who are in SNC, and by the EPA to evaluate the effectiveness of the Division’s compliance and enforcement activities with these facilities. On a quarterly basis, the QNCR is generated and Division staff responsible for compliance and enforcement activities prepares and submits a report to the EPA on the compliance status of each facility listed in SNC and the Division’s planned or ongoing compliance assurance actions, as further specified in the Code of Federal Regulations.

Through the Division’s enforcement agreement with the EPA, the Division is expected to take an informal enforcement action (see Section V.B.1. [below](#)) by the time the major discharger appears on the QNCR, and to initiate a formal enforcement action (see Section V.B.2. [below](#)) before the major discharger appears on the subsequent QNCR (generally within 60 days of the first QNCR appearance).

### B. Range of Enforcement Responses

In order to achieve a maximum degree of compliance with the Act, its implementing regulations, CDPS permits, and other applicable statutes and regulations, the Division uses a variety of enforcement mechanisms. These can be placed into two categories: 1) informal or preliminary enforcement activities and 2) formal administrative and judicial enforcement activities.

1. Informal/Preliminary Enforcement - This consists of all activities performed prior to the issuance of a formal enforcement action. Such activities may include telephone calls, e-mails, compliance advisories (including notices of significant noncompliance), meetings, requests for information, and inspections. These activities are generally of a fact-finding nature and are non-adversarial. The objective of informal and preliminary enforcement is to facilitate resolution of noncompliance problems without going to the more rigorous, adversarial, and resource-intensive administrative or judicial enforcement process. That said, informal/preliminary enforcement is not a prerequisite for pursuing formal enforcement.

Compliance advisories, inspection reports, and request for information letters are utilized as an official method of transmitting/communicating noncompliance information to facilities and entities and to gather additional information concerning suspected or documented violations of a permit or regulatory or statutory requirement. Note, however, that a letter itself can only notify the intended recipient of suspected or documented noncompliance and/or request information, but it cannot be used to *require* compliance with any portion of a permit, regulation or statute.

2. Formal Administrative and Judicial Enforcement - These actions are authorized under §§25-8-601 to 612 of the Act, as well as §25-9-110 of the ORC Statute, and may be undertaken if compliance is not achieved expeditiously after informal/preliminary enforcement action, or initially in cases of serious violations that pose an imminent danger to the environment or to the health and welfare of citizens. This category of enforcement action ranges from administrative remedies (e.g., Notices of Violation and Cease and Desist Orders), to civil judicial actions, to possible assessment of criminal penalties. Formal enforcement actions can be used to require compliance with permits, regulations and statutes, subject to the applicable appeal rights of the violator. Section V.D. [below](#) contains a detailed discussion of administrative and judicial enforcement.

#### C. Use of the Enforcement Response Guides

The Division has developed enforcement response guides to serve as a reference in determining the appropriate level of action warranted for specific violations. Upon the evaluation of the facts of a specific case and other extenuating circumstances (including resource limitations), deviations from this guidance may legitimately occur. For instance, the Division always has the discretion to take a more serious or formal enforcement response if circumstances, including environmental and public health risks warrant. However, without cause or justification, this standard guidance will generally be followed throughout the enforcement evaluation process. These guides, which are presented on the following pages, specify not only the appropriate response, but also indicate assignments of responsibility and time control goals.

Upon determining that a violation and its circumstances meet the criteria for a formal enforcement response as indicated in the enforcement response guides that follow, reviewing staff and management should then consider the following factors in making the ultimate decision to refer a case for enforcement and/or move forward with the development of a formal enforcement action:

- The root cause of the violation, including whether negligence was involved;
- The duration of the violation(s);
- The frequency and magnitude of the violation(s);
- The potential or actual impact to public health or the environment;
- The root cause of the violation, including whether negligence was involved;
- The economic benefit of the violation;
- The violator's response to the noncompliance;
- The violator's compliance history; and
- Available Division resources.

TABLE 3  
 COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE  
 Discharge Monitoring Reports

**MAJOR FACILITIES**

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>5</sup>
Failure to submit DMR(s) (i.e., delinquent DMR)	1 <sup>st</sup> delinquent DMR	Compliance Advisory letter	Compliance and enforcement	45 days
	Failure to respond/correct violation or 2 <sup>nd</sup> delinquent DMR	Compliance Advisory letter	Compliance and enforcement	45 days
	Failure to respond to previous Compliance Advisories and/or ongoing DMR delinquencies	Formal Enforcement	Enforcement	180 days <sup>6</sup>
DMR submitted but incomplete or inadequate (i.e., deficient DMR)	1 <sup>st</sup> occurrence	Compliance Advisory letter	Compliance and enforcement	45 days
	Violation repeats in subsequent reporting period(s)	Compliance Advisory letter	Compliance and enforcement	45 days
	Failure to respond to previous Compliance Advisories and/or to correct ongoing DMR deficiencies	Formal Enforcement	Enforcement	180 days <sup>6</sup>
<i>Note: In the case of the identification of multiple violations in which one or more warrants a formal enforcement response, generally all identified violations, regardless of significance, should be included in the developed enforcement action.</i>				

<sup>5</sup> Number of days from determination that the latest violation has occurred or from the date a response was required to be submitted.

<sup>6</sup> Formal enforcement action should be issued prior to facility appearing on consecutive QNCRs

TABLE 3 (continued)  
 COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE  
 Discharge Monitoring Reports

**NON-MAJOR FACILITIES<sup>7</sup>**

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE PERSON	TIME CONTROL GOAL <sup>8</sup>
Failure to submit DMRs (i.e., delinquent DMR)	1 <sup>st</sup> occurrence	Compliance Advisory letter	Compliance and enforcement	45 days
	Continuing basis (e.g., 3 consecutive monthly reporting periods, 2 consecutive quarterly reporting periods) <u>or</u> failure to respond to previous letter	Compliance Advisory letter	Compliance and enforcement	45 days
	Failure to cease continuing violations in subsequent reporting periods and/ <u>or</u> failure to respond/correct violations	Formal Enforcement	Enforcement	180 days
DMR submitted but incomplete or inadequate (i.e., deficient DMR)	1 <sup>st</sup> occurrence	Compliance Advisory letter	Compliance and enforcement	45 days
	Continuing basis (e.g., 3 consecutive monthly reporting periods, 2 consecutive quarterly reporting periods) <u>or</u> failure to respond to previous letter	Compliance Advisory letter	Compliance and enforcement	45 days
	Failure to cease continuing violations in subsequent reporting periods and/ <u>or</u> failure to respond/correct violations	Formal Enforcement	Enforcement	180 days
<i>Note: In the case of the identification of multiple violations in which one or more warrants a formal enforcement response, generally all identified violations, regardless of significance, should be included in the developed enforcement action.</i>				

<sup>7</sup> Non-Major facilities include all CDPS permitted facilities not identified as majors (e.g., minor facilities) and facilities without a CDPS permit that are subject to control regulations (e.g., Regulation 63 – Pretreatment, Regulation 64 – Biosolids, Regulation 84 – Reclaimed Water).

<sup>8</sup> Number of days from determination that the latest violation has occurred or from the date a response was required to be submitted.

TABLE 3 (continued)  
 COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE  
 Compliance Schedule Items, Permit Narrative Conditions, and Other Reporting Requirements

**MAJOR and NON-MAJOR FACILITIES**

*(Requirements specific to stormwater dischargers and AFOs are contained below)*

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>9</sup>
Failure to comply with permit compliance schedule, failure to submit permit compliance schedule or narrative conditions report, inadequate report, or failure to comply with other reporting requirements	Delinquent or inadequate report.	Compliance Advisory letter	Compliance and enforcement	45 days
	SNC (see SNC criteria in section V.A <a href="#">above</a> )	SNC letter	Compliance and enforcement	30 days
	Permittee does not respond to compliance advisories or SNC letter <u>or</u> potential exists for SNC to continue for an additional quarter	Formal Enforcement	Enforcement	180 days <sup>10</sup>
Failure to comply with enforcement action compliance schedule	Delinquent or inadequate report	Compliance Advisory	Enforcement	30 days
	Failure to perform corrective action requirements <u>or</u> ongoing failure to submit required report <u>or</u> failure to correct inadequate report	Formal Enforcement	Enforcement	90 days
Failure to report spill <u>or</u> make other noncompliance notification <u>or</u> provide requested information.	1 <sup>st</sup> occurrence	Compliance Advisory	Compliance and enforcement	45 days
	Failure to respond/correct violation <u>or</u> reoccurring reporting violations	Formal Enforcement	Enforcement	180 days

<sup>9</sup> Number of days from determination that the latest violation has occurred or from the date a response was required to be submitted.

<sup>10</sup> For major facilities, formal enforcement action should be issued prior to facility appearing on consecutive QNCRs

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>9</sup>
Failure to implement expansion requirements (domestics)	80% exceedance of throughput and failure to initiate planning/engineering or to submit report demonstrating that population is stable/declining or that future exceedances are unlikely to occur; <u>OR</u>	Compliance Advisory letter	Compliance and enforcement; Inspections	45 days
	95% exceedance of throughput and failure to commence construction			
	Failure to respond/correct violation within 90 days (i.e., SNC)	SNC letter	Compliance and enforcement; Inspections	45 days
	Ongoing failure to respond/correct violation <u>or</u> potential exists for SNC to continue for an additional quarter	Formal Enforcement	Enforcement	180 days (80% exceedances) 90 days (95% exceedances) <sup>11</sup>
Failure to implement or comply with a permit or control regulation narrative condition	1 <sup>st</sup> occurrence	Compliance Advisory letter	Compliance and enforcement	45 days
	Failure to respond/correct violation	Compliance Advisory letter	Compliance and enforcement	45 days
	Failure to respond to previous Compliance Advisories and violation ongoing or recurring	Formal Enforcement	Enforcement	180 days

<sup>9</sup> Number of days from determination that the latest violation has occurred or from the date a response was required to be submitted.

<sup>11</sup> For major facilities, formal enforcement action should be issued prior to facility appearing on consecutive QNCRs

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>9</sup>
Failure to submit data or other information required by a control regulation (e.g., Regulation 85)	1 <sup>st</sup> occurrence	Compliance Advisory letter	Compliance and enforcement	45 days
	Failure to respond/correct violation	Compliance Advisory letter	Compliance and enforcement	45 days
	Failure to respond to previous Compliance Advisories and violation ongoing	Formal Enforcement	Enforcement	180 days
<p><i>Note: In the case of the identification of multiple violations in which one or more warrants a formal enforcement response, generally all identified violations, regardless of significance, should be included in the developed enforcement action.</i></p>				

TABLE 3(continued)  
 COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE  
 Numeric Effluent Limits

**Major Domestic/Industrial Facilities and Non-Major Industrial Facilities**

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>12</sup>
Exceeding effluent limits	Infrequent or isolated violations	Compliance Advisory letter	Compliance and enforcement	45 days
	SNC (see SNC criteria in section V.A. <a href="#">above</a> )	<i><u>Majors:</u></i> SNC letter or Formal Enforcement depending on seriousness of violations and time constraints  <i><u>Industrial minors:</u></i> SNC letter	Compliance and enforcement	45 days
	SNC during an additional quarter	Formal Enforcement	Enforcement	180 days <sup>13</sup>
	Results in documented, but not continuing, environmental damage	Formal Enforcement.	Enforcement	90 days
	Results in documented <u>and</u> continuing environmental damage	Formal Enforcement	Enforcement	30 days
<i>Note: In the case of the identification of multiple violations in which one or more warrants a formal enforcement response, generally all identified violations, regardless of significance, should be included in the developed enforcement action.</i>				

<sup>12</sup> Calendar days from receipt of DMR or other notification

<sup>13</sup> Formal enforcement action should be issued prior to facility appearing on consecutive QNCRs

TABLE 3(continued)  
 COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE  
 Numeric Effluent Limits

Non-Major Domestic Facilities

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>14</sup>
Exceeding effluent limits	Infrequent or isolated violations	Compliance Advisory letter	Compliance and enforcement	45 days
	SNC (see SNC criteria in section V.A. <a href="#">above</a> )	SNC letter. Refer to field inspection staff for possible inspection, if necessary/warranted	Compliance and enforcement; Field inspections	45 days
	SNC and major construction likely necessary	SNC letter. Refer to grants and loans staff who will contact violator regarding funding.	Compliance and enforcement; Grants and loans	45 days
	SNC and facility cannot achieve compliance within 9 months	Formal Enforcement	Enforcement	270 days
	Results in documented, but not continuing, environmental damage	Formal Enforcement	Enforcement	90 days
	Results in documented <u>and</u> continuing environmental damage.	Formal Enforcement	Enforcement	30 days
<p><i>Note: In the case of the identification of multiple violations in which one or more warrants a formal enforcement response, generally all identified violations, regardless of significance, should be included in the developed enforcement action.</i></p>				

<sup>14</sup> Calendar days from receipt of DMR or other notification

TABLE 3 (Continued)  
 COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE  
 Whole Effluent Toxicity

**MAJOR AND NON-MAJOR FACILITIES**

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL
<b>MONITORING</b>				
Failure to submit WET testing DMR (if not the result of a failure to perform test)	30+ days late	Compliance Advisory letter	Compliance and enforcement	45 days after due date
	Failure to respond to Compliance Advisory	Compliance Advisory letter	Compliance and enforcement	30 days after due date of response to Compliance Advisory
	Systematic failure to respond to Compliance Advisories and/or ongoing delinquencies	Formal Enforcement	Enforcement	180 days after initial violation
Failure to perform routine testing on either species	Any single instance	Compliance Advisory letter	Compliance and enforcement	45 days after becoming aware of failure
	More than one instance in a two year period	Formal Enforcement	Enforcement	180 days after initial violation
Failure to use approved laboratory method(s)	Any single instance	Compliance Advisory letter	Compliance and enforcement	30 days after becoming aware of failure
	Second instance in any two year period	Formal Enforcement	Enforcement	180 days after initial violation
Exceedance of WET limit	Any single instance	Compliance Advisory letter	Compliance and enforcement	30 days after becoming aware of failure
	Second instance in any two year period.	Compliance Advisory letter	Compliance and enforcement	30 days after becoming aware of failure
	Three instances in two year period	Formal Enforcement	Enforcement	180 days after initial violation
Exceedance of WET limit in addition to a known environmental damage	Any single instance	Formal Enforcement	Enforcement	90 days of becoming aware of failure

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL
<b>NOTIFICATION</b>				
Failure to provide written notice of failure within required timeframe	Any single instance	Compliance Advisory letter	Compliance and enforcement	30 days after becoming aware of failure
	More than two instances or discernible pattern	Formal Enforcement	Enforcement	180 days after initial violation
<b>AUTOMATIC COMPLIANCE RESPONSE</b>				
Failure to perform accelerated testing	Any single instance	Compliance Advisory letter	Compliance and enforcement	30 days after becoming aware of failure
	More than one instance in a two year period	Formal Enforcement	Enforcement	180 days after initial violation
Failure to conduct or complete a PTIE/TIE/TRE or other investigation in required timeframe	First failure to complete investigation within 90 days	Compliance Advisory letter	Compliance and enforcement	30 days after due date
	More than one instance or failure to respond to compliance advisory from first failure	Formal Enforcement	Enforcement	180 days after initial violation
Failure to conform to procedures for conducting Accelerated testing or PTIE /TIE/TRE or other investigation	Any single instance	Compliance Advisory letter	Compliance and enforcement	30 days after becoming aware of failure
	More than one instance in three years or where failure to conform to procedures results in inconclusive/ unacceptable TIE	Formal Enforcement	Enforcement	180 days after initial violation
Failure to submit PTIE/TIE/TRE or other investigation	Any single instance	Compliance Advisory letter	Compliance and enforcement	30 days after becoming aware of failure

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL
progress reports	More than two instances over two years or discernible pattern	Formal Enforcement	Enforcement	180 days after initial violation
<b>CONTROL PROGRAM</b>				
Failure to submit a plan to address the identified toxicant <u>or</u> failure to comply with plan to address identified toxicant	Any single instance	Compliance Advisory letter	Compliance and enforcement	45 days after due date
	More than one instance or failure to respond to compliance advisory from first failure	Formal Enforcement	Enforcement	180 days after initial violation
<p><i>Note: In the case of the identification of multiple violations in which one or more warrants a formal enforcement response, generally all identified violations, regardless of significance, should be included in the developed enforcement action.</i></p>				

TABLE 3(continued)  
 COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE  
 Inspection/Field-identified Violations and Other Violations

**MAJOR AND NON-MAJOR FACILITIES**

*(Requirements specific to stormwater dischargers and AFOs are contained below)*

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>15</sup>
Operation and maintenance violations noted in an inspection. Examples include calibration errors, sampling/ analytical errors, sample preservation errors, data calculation errors, general improper operation and maintenance, failures to maintain records, etc.	Does not pose an immediate threat to the environment or public health	Compliance Advisory letter. Follow-up inspection as necessary	Inspections	45 days
	Poses a substantial threat to the environment or public health or results in environmental damage	Compliance Advisory letter; Refer to Enforcement staff for formal enforcement.	<i>Compliance Advisory: Inspections</i>  <i>Formal action development: Enforcement</i>	45 days (compliance advisory)  180 days (formal enforcement) <sup>16</sup>
	Failure to respond and/or correct violation	Second compliance advisory; Refer to Enforcement staff for formal enforcement	<i>Compliance Advisory, Enforcement referral: Inspections</i>  <i>Formal action development: Enforcement</i>	30 days (compliance advisory)  180 days (formal enforcement) <sup>16</sup>
Reporting false information (willfully and intentionally)	If documented	Refer to Enforcement staff for criminal referral to the AGO.	<i>Initial enforcement referral: Inspections</i>	7 days (initial referral)
			<i>Criminal referral: Enforcement</i>	30 days (criminal referral)
Discharging without a permit or from an unauthorized point (includes unapproved bypass or pass-through of pollutants and	If documented, but no environmental damage	Refer to Enforcement staff for formal enforcement in all cases.	<i>Enforcement referral: All</i>  <i>Action development: Enforcement</i>	30 days (referral)  90 days (formal enforcement)

<sup>15</sup> Number of calendar days from: the date of the inspection; the date of receipt of supporting information (sample results, etc.); or from the response date identified in the compliance advisory, as appropriate.

<sup>16</sup> For major facilities, formal enforcement action should be issued prior to facility appearing on consecutive QNCRs

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>15</sup>
seepage)	If documented <u>and</u> environmental damage	Refer to Enforcement staff for formal enforcement in all cases.	<i>Enforcement referral:</i> All  <i>Action Development:</i> Enforcement	7 days (referral)  30 days (formal enforcement)
Construction without site location or design approval (domestics)	If documented, but does not pose a significant threat to public health or the environment	Compliance Advisory letter	Inspections, compliance	45 days
	Failure to respond/correct violation	Refer to Enforcement staff for formal enforcement	<i>Enforcement referral:</i> All  <i>Action development:</i> Enforcement	30 days (referral)  180 days (formal enforcement) <sup>16</sup>
	If documented <u>and</u> poses a significant threat to public health or the environment	Refer to Enforcement staff for formal enforcement	<i>Enforcement referral:</i> All  <i>Action development:</i> Enforcement	30 days (referral)  180 days (formal enforcement) <sup>16</sup>
<i>Note: In the case of the identification of multiple violations in which one or more warrants a formal enforcement response, generally all identified violations, regardless of significance, should be included in the developed enforcement action.</i>				

<sup>15</sup> Number of calendar days from: the date of the inspection; the date of receipt of supporting information (sample results, etc.); or from the response date identified in the compliance advisory, as appropriate.

<sup>16</sup> For major facilities, formal enforcement action should be issued prior to facility appearing on consecutive QNCRs

Table 3 (continued)  
 COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE  
 Certified Operator in Responsible Charge (ORC)

**MAJOR AND NON-MAJOR FACILITIES**

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE PERSON	TIME CONTROL GOAL
Failure to have an ORC <u>or</u> to have an ORC at the required certification level (includes expired certification)	First instance of non-compliance	Compliance Advisory letter	Compliance and enforcement	30 days after becoming aware of violation
	Failure to respond / Failure to correct violation	Compliance Advisory letter	Compliance and enforcement	30 days after due date of response to Compliance Advisory
	Continuing failure	Formal Enforcement	Enforcement	180 days after initial violation
	Division-initiated facility classification level change triggers violation	Notification letter, facility to submit plan within 30 days to correct resulting violation within 180 days	Engineering (classification change)  Compliance and enforcement (notification letter)	30 days after facility classification change initiated
	Failure to respond with plan to correct resulting violation	Compliance Advisory letter	Compliance and enforcement	30 days after due date of plan
	Failure to respond to Compliance Advisory or to correct resulting violation within 180 days	Formal Enforcement	Enforcement	270 days after facility classification change initiated
Failure to report ORC contact information to Division	First instance of non-compliance	Compliance Advisory letter	Compliance and enforcement	30 days after becoming aware of violation
	Failure to respond Failure to correct violation	Compliance Advisory letter	Compliance and enforcement	30 days after due date of response to Compliance Advisory
	Continuing failure	Formal Enforcement	Enforcement	180 days after initial failure

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE PERSON	TIME CONTROL GOAL
Failure to notify Division with accurate information on treatment system or relevant treatment system changes	1 <sup>st</sup> occurrence	Compliance Advisory letter/ notification of facility classification change	Engineering; Compliance and enforcement	30 days after becoming aware of violation
	Failure to respond /Failure to correct violation	2 <sup>nd</sup> Compliance Advisory letter; formal enforcement if serious	Compliance and enforcement	30 days after due date of response to Compliance Advisory (2 <sup>nd</sup> compliance advisory)  180 days after initial failure (formal enforcement)
	Systematic or continuing failure	Formal Enforcement	Enforcement	180 days after initial failure
<i>Note: In the case of the identification of multiple violations in which one or more warrants a formal enforcement response, generally all identified violations, regardless of significance, should be included in the developed enforcement action.</i>				

TABLE 3 (Continued)  
 COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE  
 Stormwater Associated with Industrial Activities (including Construction) Violations

*(For requirements not addressed in this section, but specified elsewhere in Table 3 for non-major facilities, those responses are also applicable)*

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>17</sup>
Conducting Covered Activity without a Stormwater Permit	Conducting a covered activity.	Formal Enforcement	<u>Enforcement Referral:</u> Inspections, compliance  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Prepare a Stormwater Management Plan (SWMP)	Failure to prepare SWMP but Stormwater Management System is implemented in field (functional control measures installed, inspections conducted, etc.), <u>and</u> no documented significant environmental impacts, <u>and</u> location has low/moderate potential for significant environmental impacts.	Compliance Advisory letter	Inspections	45 days
	Failure to prepare SWMP and a Stormwater Management System is not implemented in field (no or few functional control measures installed, inspections not conducted, etc.), <u>or</u> documented significant environmental impacts, <u>or</u> location has high potential for significant environmental impacts.	Formal Enforcement	<u>Enforcement Referral:</u> Inspections  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Deficient Stormwater Management Plan (SWMP)	Deficiencies in SWMP but a Stormwater Management System is implemented in field (functional control measures installed, inspections conducted, etc.).	Compliance Advisory letter	Inspections	45 days

<sup>17</sup> Number of calendar days from: the date of the inspection; the date of receipt of supporting information (sample results, etc.); or from the response date identified in the compliance advisory, as appropriate

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>17</sup>
	Deficiencies in SWMP and a Stormwater Management System is not implemented in field (no or few functional control measures installed, inspections not conducted, etc.).	Formal Enforcement	<u>Enforcement Referral:</u> Inspections  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Install, Maintain or Properly Select Control Measures	Most control measures properly selected, designed, installed and maintained, <u>and</u> no documented significant environmental impacts, <u>and</u> location has low/moderate potential for significant environmental impacts.	Compliance Advisory letter	Inspections	45 days
	Systematic failure to properly select, design, install or maintain control measures based on one or more inspections of either a single facility, entity, or multiple facilities or entities acting in concert.	Formal Enforcement	<u>Enforcement Referral:</u> Inspections  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
	Failure to properly select, design, install or maintain control measures <u>and</u> documented significant environmental impacts, or location has high potential for significant environmental impacts.	Formal Enforcement	<u>Enforcement Referral:</u> Inspections  <u>Action Development:</u> Enforcement	60 days (referral)  180 days (formal enforcement)
Failure to Perform Self-Inspections of Stormwater Management System or to Take Corrective Actions Identified During Self-Inspections	Failure to perform inspections or to take corrective actions, <u>and</u> no documented significant environmental impacts, <u>and</u> location has low/moderate potential for significant environmental impacts.	Compliance Advisory letter	Inspections	45 days

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>17</sup>
	Failure to perform inspections or to take corrective actions, <u>and</u> documented significant environmental impacts, or location has high potential for significant environmental impacts.	Formal Enforcement	<u>Enforcement Referral:</u> Inspections  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Submit Required/Requested Reports or Documents <i>(Annual Reports, documents requested during inspections, compliance schedule items, etc.)</i>	Initial failure to submit required or requested report or document.	Compliance Advisory letter specifying time frame to submit report or document	Inspections, compliance	45 days
	Failure to respond to Compliance Advisory or recurring failures to submit required or requested report or document.	Formal Enforcement	<u>Enforcement Referral:</u> Inspections, compliance  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Adequately Respond to Division Compliance Advisory	Inadequate response to initial Compliance Advisory or to first notice of inadequate response.	Send <u>certified</u> Compliance Advisory identifying inadequate or non-response and specifying time frame to respond.	Inspections, compliance	10 days
	Failure to respond to second notice of inadequate response.	Formal Enforcement	<u>Enforcement Referral:</u> Inspections, compliance  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Maintain Required Records <i>(Annual Reports, inspection reports, etc.)</i>	Failure to maintain records but a Stormwater Management System is implemented in field (functional control measures installed, inspections conducted, etc.).	Compliance Advisory letter	Inspections, compliance	45 days

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>17</sup>
	Failure to maintain records and a Stormwater Management System is not implemented in field (no or few functional control measures installed, inspections not conducted, etc.).	Formal Enforcement	<u>Enforcement Referral:</u> Inspections, compliance  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Pollution, Contamination or Degradation of State Waters	Evidence that a violation of any condition of the permit causes or contributes to an exceedance of a water quality standard.	Formal Enforcement	<u>Enforcement Referral:</u> Inspections, compliance  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Discharge Monitoring Report Violations	All	Refer to Table 3 section on Discharge Monitoring Reports above		
Numeric Effluent Limit Violations	All	Refer to Table 3 section on Numeric Effluent Limits above		
Other Non-Effluent Limitation Violations	Other non-categorized violations, <u>and</u> no documented significant environmental impacts, <u>and</u> location has low/moderate potential for significant environmental impacts.	Compliance Advisory letter	Inspections or compliance	45 days
	Other non-categorized violations, <u>and</u> documented significant environmental impacts or location has high potential for significant environmental impacts.	Formal Enforcement	<u>Enforcement Referral:</u> Inspections, compliance  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>17</sup>
Systemic Violations of Stormwater Regulations or Permit Requirements	Systemic history of noncompliance by an entity, related entities, or multiple entities acting in concert.	Formal Enforcement	<u>Enforcement Referral:</u> Inspections, compliance  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
<p><i>Note: In the case of the identification of multiple violations in which one or more warrants a formal enforcement response, generally all identified violations, regardless of significance, should be included in the developed enforcement action.</i></p>				

TABLE 3 (Continued)  
 COLORADO WATER QUALITY CONTROL DIVISION ENFORCEMENT RESPONSE GUIDE  
 Animal Feeding Operations (AFO) Requirements

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
<b>** Violations Applying To All Regulated Animal Feeding Operations**</b> <b>**<i>(Including AFO, Permitted CAFO, Unpermitted CAFOs, and HCSFOs)</i>**</b>				
Records Violations (e.g., Failure To Prepare, Submit or Maintain Required Records and/or Documents)	Infrequent or isolated violations.	Compliance Advisory letter	Ag Program staff, Inspections	45 Days
	Multiple failures to prepare or maintain required records <u>and</u> potential of environmental impact(s) as a result of violation, and/or documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Respond/ Correct Violation	1 <sup>st</sup> occurrence	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days
	Failure to respond/correct violation	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Unauthorized Discharge of Pollutants to State Waters (including groundwater hydrologically connected to surface water) <i>(For AFO's- follow designation process first to determine appropriate enforcement response)</i>	Documented discharge of pollutants, low/moderate potential for environmental impacts as a result of violations, <u>and</u> no documented environmental impacts.	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days

<sup>18</sup> Number of calendar days from the date of inspection, the date of receipt of supporting information (sample results, etc.), or from the response date identified in the Compliance Advisory, as appropriate.

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
	Documented discharge of pollutants, high potential for environmental impacts as a result of violations, and/or reoccurring discharges <u>and/or</u> documented environmental impacts.	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Unauthorized Discharge of Pollutants to Waters of the U.S. <i>(For Small AFO's- follow designation process first to determine appropriate enforcement response)</i>	Documented discharge of pollutants to waters of the U.S.	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Report Discharge of Pollutants to State Waters/ Waters of the U.S.	Any single instance	Compliance Advisory letter	Ag Program staff, Field Inspector	45 days
	Reoccurring failures, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
<b>** Violations Applying Specifically To <u>AFO and Unpermitted CAFO</u> Facilities**</b>				
Failure to Install, Maintain or Properly Select Best Management Practices	BMPs not adequately implemented, maintained, and/or properly selected, low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 days
	BMPs not adequately implemented, maintained, or properly selected, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s) from site.	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
<b>** Violations Applying Specifically To <u>Unpermitted CAFO</u> Facilities **</b>				
Exceedance of the Agronomic Rate of Application	Isolated incident, low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
	Reoccurring exceedances, high potential of environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Properly Design, Install, or Maintain Impoundments and/or Conveyance Structures	Deficiencies in design, installation, or maintenance, low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 days
	Deficiencies in design, installation, or maintenance, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to implement required Plan or Submit a Revised Plan  <i>(FMP, Standard Operating Procedures (SOPs)...etc.)</i>	Plan deficiencies, isolated failures to implement plan, and/or failure to submit revised plan, and low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
	Significant plan deficiencies, multiple failures to implement plan, and/or multiple failures to submit revised plan(s), high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Properly Close an Impoundment	Closure completed, but minor deficiencies in closure process.	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days
	Failure to close impoundment, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
<b>** Violations Applying Specifically To <u>Permitted CAFO</u> Facilities **</b>				
Exceedance of the Agronomic Rate of Application	Isolated incident, low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days
	Reoccurring exceedances, and/or high potential of environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
Failure to Implement Plan (e.g., NMP)	Plan deficiencies, isolated failures to implement plan, and low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days
	Plan deficiencies, multiple failures to implement the plan(s), and high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Submit a Revised Plan (e.g., NMP) and Permit Amendment Application	Failure to apply for permit amendment to include revised Plan, low/moderate potential for environmental impacts as a result of violation, and no documented environmental impacts.	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days
	Failure to apply for permit amendment to include revised Plan, high potential for environmental impacts as a result of violation, <u>and/or</u> documented environmental impacts.	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
Failure to Submit Annual CAFO Report	Failure to submit Annual CAFO Report.	Compliance Advisory letter	Ag Program Staff	45 Days
Failure to Properly Design, Install, or Maintain Impoundments and/or Conveyance Structures	Deficiencies in design, low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 days
	Failure to properly design, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Properly Close an Impoundment	Closure completed, but minor deficiencies in closure process.	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days
	Failure to close impoundment, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
<b>** Violations Applying To <u>HCSFO</u> Facilities Only **</b>				
Failure to Submit Required Report(s)	Failure to submit Semi-Annual, Annual, or Quarterly Monitoring Report, updated plan, or other required report.	Compliance Advisory letter	Ag Program Staff	45 Days
Exceedance of the Agronomic Rate of Application	Any exceedance	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Implement Plan  <i>(Swine Waste Management Plan, Monitoring Plan, Operations Plan, etc.)</i>	Plan deficiencies, low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days
	Plan deficiencies along with multiple failures to implement plan, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Submit a Revised Plan and Permit Amendment Application  <i>(Swine Waste Management Plan, Monitoring Plan, Operations Plan, etc.)</i>	Failure to apply for permit amendment to include revised Plan, low/moderate potential for environmental impacts as a result of violation, and no documented environmental impacts.	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
	Failure to apply for permit amendment to include revised Plan, high potential for environmental impacts as a result of violation, and/or documented environmental impacts.	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Operating Without A Permit	Failure to amend permit to include additional facilities, increasing number of permitted swine, changing animal waste treatment, storage or disposal practices from those permitted, changing the nature and volume of animal waste generated at the HCSFO, or disposing of animal waste at any location other than those identified in the permit.	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days
	Failure to obtain a permit authorizing HCSFO operations.	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Properly Close and/or Remediate Facility	Closure completed, but failure to report to Division, past due, <u>and/or</u> minor deficiencies in closure process, <u>and/or</u> low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
	Overall failure to close or remediate facility, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Report Spills (excluding "de minimus" spills")	Low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 days
	Reoccurring failures	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Properly Design, Install, or Maintain Impoundments and/or Conveyance Structures	Deficiencies in design, installation, or maintenance, low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 days
	Failure to properly design, install, and/or maintain impoundments and/or conveyance structures, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)

VIOLATION	CIRCUMSTANCES	RESPONSES	RESPONSIBLE STAFF	TIME CONTROL GOAL <sup>18</sup>
Failure to Submit Intervention Protocol	Isolated failure, low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days
	Reoccurring failures, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
Failure to Implement Approved Intervention Protocol	Failure to timely implement, minor deficiencies, low/moderate potential for environmental impact(s) as a result of violation, <u>and</u> no documented environmental impact(s).	Compliance Advisory letter	Ag Program staff, Field Inspector	45 Days
	Major deficiencies, high potential for environmental impact(s) as a result of violation, <u>and/or</u> documented environmental impact(s).	Formal Enforcement	<u>Enforcement Referral:</u> Ag Program staff, Field Inspector  <u>Action Development:</u> Enforcement	60 days (referral)  180 Days (formal enforcement)
<p><i>Note: In the case of the identification of multiple violations in which one or more warrants a formal enforcement response, generally all identified violations, regardless of significance, should be included in the developed enforcement action.</i></p>				

## D. Formal Enforcement Actions

If noncompliance problems cannot be resolved through the use of informal/preliminary measures, or if violations pose an imminent threat to public health and/or the environment, formal enforcement actions are warranted. There are three categories of enforcement actions: administrative, civil, and criminal. The Division has authority to pursue enforcement for violations of the Act and ORC Statute, the regulations promulgated thereunder, and CDPS permits as described in §§25-8-601 to 612 of the Act and §25-9-110 of the ORC Statute. Each type of enforcement action is discussed below.

### 1. Administrative Enforcement Actions

When it is determined that an enforcement action must be undertaken, administrative enforcement mechanisms are generally employed in an effort to resolve the noncompliance problem. If the problem can be resolved through this type of enforcement, the resource commitments of civil litigation can sometimes be avoided. The Division utilizes the following administrative actions under the Act, ORC Statute, and through Division practice.

- Notice of Violation (NOV), Cease and Desist Order (CDO), and Clean-up Order (CUO) - Issuance of an NOV allows the Division to formally notify a person or entity that they are in violation and to provide the nature of any corrective action that may be required. If accompanied by a CDO, the Division may prescribe the time by which the corrective actions must be completed and the noncompliance terminated. Failure by the person or entity to comply with the terms of a NOV/CDO without just cause may result in a referral of the case to the AGO for judicial action.

The Division is authorized to issue a CUO to a person or entity that has dumped, spilled, or otherwise deposited material in or near state waters which may pollute them. As outlined in the Act, any CDO or CUO issued by the Division must be accompanied by, or have incorporated in it, an NOV.

Where an NOV has been issued, the Division will seek to have civil penalties imposed in accordance with the Division's applicable penalty policy (Exhibit B). The maximum civil penalty is \$10,000 per day of violation cited for violations of the Act, its implementing regulations, and CDPS permits. The maximum penalty for violations of the ORC Statute and its implementing regulation is \$300 per day of violation.

The essential contents of an NOV are: 1) the Findings of Fact, which identifies the facts which have been used to establish that the violations occurred; 2) the notice of violation, which specifies what requirements (e.g., permit, the Act, previous CDO) were violated; and 3) the nature of any corrective action necessary to cease the violations. The CDO specifies the time by which the violations must be ceased. The CUO specifies any required action that the violator must take to remove, remediate or mitigate pollutants that have been deposited in or near state waters.

Interim effluent limits may be granted to “shield” the violator while they are completing items required in a compliance schedule. However, they are to be used in CDOs only in situations where the Division is fully satisfied that the compliance schedule requirements will be met, and generally only in situations that include extenuating circumstances further justifying the need. When used in a NOV or CDO, they should be termed “temporary effluent concentration requirements” and not “effluent limitations” so as not to lead the permittee to think the permit is revised.

Once an NOV, CDO, or CUO is issued, any compliance schedule milestones due dates are entered and tracked in ICIS. When a NOV, CDO, or CUO includes a schedule for coming into final compliance, it shall not be closed out until the required items have been completed and compliance with the final effluent limitations is attained (as applicable).

- Compliance Order on Consent (COC) and Expedited Settlement Agreement (ESA) - Issuance of a COC or ESA allows the Division to resolve certain violations and penalties without the need for protracted litigation, if agreement can be reached with a violator on a penalty and any necessary corrective actions. In these cases, the violator must agree that the COC and/or ESA constitutes a NOV/CDO, CUO and/or Order for Civil Penalty issued pursuant to §§25-8-602, 605, 606, 608 and/or §25-9-110, as applicable. Once a COC or ESA is executed and final, any compliance schedule milestones and due dates are entered and tracked in ICIS, and the COC or ESA shall not be closed out until the required items have been completed.
- Order for Civil Penalty - Issuance of an Order for Civil Penalty allows the Division to impose civil penalties for any violations of the Act, any permit issued under the Act, any control regulation promulgated pursuant to the Act, any final CDO or CUO, or violations of the ORC Statute. To make consistent determinations on the amount of penalty warranted and appropriate for a violation, the Division generally relies on the applicable penalty policy (Exhibit B), which considers, at a minimum, the following statutory factors:
  - The potential damage from the violation;
  - The violator’s compliance history;
  - Whether the violation was intentional, reckless, or negligent;
  - The impact or threat to public health and the environment;
  - The duration of the violation; and
  - The economic benefit realized as a result of the violation.

Once an Order for Civil Penalty is issued, the penalty amount and due date(s) are entered and tracked in ICIS and the Order for Civil Penalty shall not be closed out until the required penalty is paid in full.

## 2. Civil Enforcement Actions

Civil enforcement actions are judicial actions taken against a violator when violations are determined to be serious enough to warrant seeking restraining orders, injunctions and/or court-ordered civil penalties or remedies. The Division has responsibility for identifying situations which warrant such action and assisting the AGO in preparing a case. The district court can assess penalties and/or order the discharger to take specific action (e.g., comply with a CDO or to cease a prohibited discharge.)

Division staff will consider several factors to determine which cases should be referred to the AGO for judicial action. These factors include:

- Evidence of significant violations of a cease and desist order;
- The ability to prove the violations convincingly in court;
- The discharger's recent (past three to five years) compliance history;
- The environmental harm resulting from the violations; and
- The strategic value of the case, including its likelihood of deterring others from violating similar requirements.

### a. Approval for Referral

After a case is selected for potential civil referral by compliance and enforcement staff, an informal consultation with the AGO takes place to ensure that the case has legal merit. The decision to proceed then escalates to management (e.g., Program Manager, Division Director) where technical and legal resource implications are considered. Once the Program Manager and Division Director are in agreement on the appropriateness and timing of the case, the case is referred in writing to the Executive Director's Office for final approval. The AGO then prepares the necessary documents which will be filed in district court.

### b. Development of the Civil Case

The AGO takes the lead in the preparation for litigation, including setting the hearing, performing depositions, and filing motions. Division staff provides technical input and direction. The assigned attorney has lead responsibility for the case and, along with the appropriate Division staff, gathers and organizes evidence.

The case may include a request for the court to impose a civil penalty. The civil penalty that the State will request the court to impose is calculated in accordance with the Division's applicable penalty policy (Exhibit B).

The case may be settled by means of a consent decree between the parties and filed with the court anytime from the filing of the complaint up until a final court order deciding the case. If a case terminates in a court-sanctioned consent decree, any schedule milestones and report due dates of the decree are entered and tracked in ICIS.

### 3. Criminal Enforcement Actions

A criminal enforcement action can be appropriate when the actions associated with the violation were made willfully, recklessly, knowingly, intentionally, or with criminal negligence.

The following are specific examples of criminal violations:

- Willful or criminally negligent violations of any terms of any permits, regulations, lawful notices, orders or standards;
- Knowingly making false statements to a Division employee or in any document required to be filed or maintained by the Act or the regulations;
- Knowingly making false statement on a DMR - (proof of specific criminal intent is unnecessary);
- Tampering with analytical results or equipment; and
- Willfully discharging without a permit that causes or threatens significant environmental contamination or a human health hazard.

#### a. Action on Suspected Criminal Violations

Whenever a suspected criminal violation is discovered, it should immediately be discussed with the Program Manager/Division Director and, after their concurrence, with the appropriate AGO representative. Any referral to the AGO will be made in writing by the Division Director to the Executive Director's Office, who will then refer the matter to the AGO.

#### b. Criminal Penalties

Criminal pollution violations under §25-8-609, C.R.S., may subject an entity to a fine of not more than \$25,000 per day of violation and are dependent on the intent of the violator. If there is a second conviction for an offense which took place within two years of the first occurrence, then the offender can be fined up to \$50,000 per day of violation. Other criminal violations may have smaller or larger penalties.

## EXHIBIT A - CONVENTIONAL AND TOXIC POLLUTANTS

### Group I / SNC Conventional Pollutants (40% exceedance of limit)

#### *Oxygen Demand*

Biochemical Oxygen Demand  
Chemical Oxygen Demand  
Total Oxygen Demands  
Total Organic Carbon  
Other

#### *Solids*

Total Suspended Solids (Residues)  
Total Dissolved Solids (Residues)  
Other

#### *Nutrients*

Inorganic Phosphorus Compounds  
Inorganic Nitrogen Compounds  
Other

#### *Detergents and Oils*

MBAS  
NTA  
Oil and Grease  
Other detergents or algicides

#### *Minerals*

Calcium  
Chloride  
Fluoride  
Magnesium  
Sodium  
Potassium  
Sulfur  
Sulfate  
Total Alkalinity  
Total Hardness  
Other Minerals

#### *Metals*

Aluminum  
Cobalt  
Iron  
Vanadium

### Group II /SNC Toxic Pollutants<sup>19</sup> (20% exceedance of limit)

#### *Metals (ALL FORMS)*

Other metals not specifically listed  
under Group I

#### *Inorganic*

Cyanide  
Total Residual Chlorine

#### *Organics*

All organics are Group II except  
those specifically listed under  
Group I

---

<sup>19</sup> For a more complete list of toxic pollutants, see the Code of Federal Regulations at [40 CFR 401.15](#).

EXHIBIT B - CIVIL PENALTY POLICIES

# **CIVIL PENALTY POLICY**

**STATE OF COLORADO  
WATER QUALITY CONTROL DIVISION  
DENVER, COLORADO**

**MAY 1, 1993**

## I. Introduction

Section 25-8-608, C.R.S. of the "Colorado Water Quality Control Act" (the Act) provides for civil penalties of up to \$10,000 per day for violations of; the Act, any permit issued pursuant to the Act, or any final cease and desist order (CDO). The Water Quality Control Division (the Division) is responsible for recommending a civil penalty amount to the designee of the Executive Director of the Colorado Department of Health. The Assistant Director for the Office the Environment, who is the designee of the Executive Director, is then responsible for imposing a penalty which may be equal to, greater than, or less than the penalty recommended by the Division. Once the penalty has been assessed by the assistant director, the violator has the right to appeal the penalty amount to the Water Quality Control Commission (the Commission) and may further appeal the Commission's decision to a court of competent jurisdiction.

## II. Objective

This document establishes the guidelines which the Division will use as its basis for developing civil penalty amounts and is designed to provide for a fair and consistent approach while allowing for a reasonable amount of flexibility.

It is appropriate, in respect of the permittees who put forth the necessary effort (physical and financial) to remain in compliance, to pursue collection of a civil penalty where a notice of violation (NOV) must be issued because a permittee has failed to make this effort. These penalties are intended to encourage facility compliance through proper operation and maintenance and timely facility upgrades. The Division will continue its historic effort of working with permittees to achieve and maintain compliance. But, where that fails, formal enforcement will result and civil penalties will be sought.

## III. Initial Penalty Determination

The Division will establish an "initial" proposed penalty which normally will be used as a starting point in any settlement negotiations once the NOV has been issued and the legally required period for submittal of a response has passed. The "initial" penalty for effluent violations will be based upon the following criteria:

- (1) Potential Damage
- (2) Fault
- (3) History of Non-Compliance

The initial penalty for administrative violations will be determined as provided for under Part III.B.

A. Methodology For Determining Penalties For Effluent Violations

1. Potential Damage Component (\$6,000/day of violation-maximum)  
- This component is based on the potential the effluent violation(s) had to damage one or more of the classified beneficial uses of the receiving water. Where the receiving water is not classified for a beneficial use which is in place, the potential damage component will be determined based on uses established in the permit, or as otherwise determined by the Division. Examples of this last concept would be: 1) an agricultural use where a discharge is to an irrigation ditch; or 2) a water supply use where a discharge is to a segment on which a surface water supply use is in place.

Where no beneficial use in the stream or waterbody receiving the discharge has been established, the penalty for the "potential damage" will be based solely on the type of technology based limitation or control regulation that was violated. The calculation of the potential damage component will be done by using a chart (Figures 1 & 2) which assigns a point value based on the pollutant and the established beneficial use or, for technology based parameters, based on the pollutant alone. The potential damage component for violations of internal limitations will be assessed using the figure for technology based limits. A multiplier (Figure 3) will be applied to the point value, based on the degree of exceedance and the actual flow rate of the discharge, to calculate a point total for that single violation. The flow to be used (30-day avg., daily avg., etc.) should be consistent with the averaging period for the type of limit that was violated. The point total is to be multiplied by \$200/point to arrive at a potential damage penalty value for the violation. Penalty amounts for each violation cited are to be calculated. For any calendar day where there was more than one violation cited, the potential damage component of the penalty for that day shall be set using the largest penalty amount for any individual parameter.

Use of this component is relevant only where the Division does not have site specific data on the impact the violation(s) had on the beneficial uses of the receiving water. Where information is available which shows that a measurable impact (fish kill, drinking water contamination, etc.) occurred, the portion of the penalty attributable to the impact, at a minimum, will be greater than that which would have been assigned using the above-described potential damage criteria. In such cases, depending on the impact of the violations, the portion of the penalty attributable to the impact may be set at a level which would make the total daily penalty at an amount equal to the statutory maximum.

If the violator can show, through in-stream sampling data, actual effluent and stream flow data, biomonitoring results, etc., that actual conditions in the receiving water as a result of the discharge would have resulted in little or no damage to the beneficial uses, the potential damage portion of the penalty may be reduced by as much as fifty percent.

In the case of a discharge without a permit or a discharge from an unauthorized point, since there are no effluent limits and associated monitoring, the potential damage portion of the penalty may be set at a value of up to \$6,000/day in the absence of site-specific flow, sampling and water quality data. Under these circumstances the Division may use reasonable assumptions in determining a "relative" impact that the discharge had on the receiving water. These assumptions should be based on any physical evidence (eg. known volumes and estimated periods of discharge to establish an average flow rate, chemicals used at the site, etc.) which the discharger has provided. In the absence of such data the penalty will be based on the type of "business" (municipal wastewater treatment plant, heavy industry, etc.), the classification of the receiving waters and any eyewitness or after-the-fact assessments of the impact the discharge had on the receiving waters.

Where adequate data is available the potential damage shall be determined using the same criteria for a permitted discharge.

In either case, in order to account for the fact that the discharge was not authorized, the penalty may be increased by up to 50 percent over the calculated value but it shall not exceed \$6,000.

2. Fault Component (\$3,000/day of violation-maximum) - This component can be assessed from one of three categories, based on the degree of fault which can be attributed to the violator and which may have caused or contributed to each violation cited.
  - a. Category 1 (\$200 to \$1,000/violation) - Any situation where the violator could not reasonably have been expected to be aware of the circumstances which led to the violation.
  - b. Category 2 (\$1,000 to \$2,000/violation) - Any situation where the violator should have been aware of circumstances which led to the violation or where a delay in the completion of physical or operational improvements was beyond the control or means of the violator. The size of the entity, as well as the engineering, legal and financial resources at their disposal, will be considered in determining whether the fault component is considered to fall within category two or category three.

- c. Category 3 (\$2,000-\$3,000/violation) - Any case where the violator was aware of the circumstances which led to the violation 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.

Penalty amounts using one of the three categories will be determined for each day of violation based on the circumstances which led to the violation. The size (design flow) of the facility and its classification under the Operator Certification Regulations will be taken into account in determining penalty amounts within each category of the fault component since the level of sophistication is expected to be greater for larger and more complex facilities. Penalty amounts for each calendar day shall be calculated by totalling the penalties attributable to each unique set of circumstances for any violations which occurred on that particular day, up to a maximum amount of \$3,000/day.

3. History Component (\$1,000/day of violation-maximum) - The penalty amount attributable to the violator's history of non-compliance with the water quality statute and regulations will be based on the criteria in the following categories.
  - a. Category 1 (\$1000/day of violation) - Previous NOV and CDO issued for one or more violations 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 not substantially comply with a final condition of the previous CDO or a superceding stipulated agreement.
  - b. Category 2 (\$900/day of violation) - Previous NOV issued for one or more violations cited in the current NOV, within three years of the date of issuance of the current NOV.
  - c. Category 3 (\$600-\$800/day of violation) - Previous NOV and CDO issued for violations, 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 CDO or a superceding stipulated agreement.

- d. Category 4 (\$400-\$600/day of violation) - 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.
- e. Category 5 (up to \$400/day of violation) - Any effluent violation during the previous five years, other than those cited in the current NOV, which has been documented on a DMR or in written form.

Where multiple categories under the history component can be justified, the category that directly relates to the violation which occurred on the day of violation in question shall be used in determining the penalty for that day.

**B. Methodology For Determining Penalties For Administrative Violations**

Penalties for administrative violations will be determined by one of the following methodologies.

1. Administrative Violations Which Contributed To In-Stream Impacts or Effluent Violations - Where there are administrative violations (violations of pretreatment conditions, discharging from a point not authorized by the permit, failure to report acceptance of additional pollutants at the treatment plant, etc.) which led to the discharge of a pollutant which had an impact on the receiving stream, the penalty for such violations will be calculated by using the procedure outlined in Part III.A. In such cases, actual in-stream impacts (fish kill or noticeable changes to the stream's appearance), impacts as determined by calculation of in-stream pollutant concentrations, or exceedances of calculated effluent limitations will be used to determine the potential damage component of the penalty. The Division may use best engineering judgement to determine probable effluent quality, effluent flow rates, etc., in the absence of actual data. If an in-stream impact cannot be demonstrated, then the penalty will be calculated in accordance with Part III.B.2.c.

2. All Other Administrative Violations - Penalties for all other administrative violations will be set as described below.
- a. Penalties For Delinquent Or Improperly Completed Discharge Monitoring Reports - Submittal of complete and timely discharge monitoring reports (DMRs) is mandatory since the DMR provides essential information which the Division must have in order to assess compliance with the effluent limitations for the facility.
- i. Penalties for delinquent, late or improperly completed DMRs will be \$250 per DMR if the corretly completed DMR is submitted prior to the issuance of the NOV and \$500 per DMR thereafter. In cases where the permittee has been issued a previous NOV for late or incomplete DMR's, or where the Division has a long history of correspondence with the permittee regarding these types of violations, the penalty for each report may be increased by one hundred percent per occurrence. The amount of the increase will be based on the period during which these violations have occurred and the severity of the violations.
- ii. In instances where the permittee has failed to complete a DMR because of the unavailability of analytical effluent results, or where all available data have not been reported, the Division will set the penalty as follows:

In situations where an incomplete DMR is submitted the penalty, for violations cited in the first NOV, will consist of a base penalty per DMR of up to \$500 plus the cost of analysis for each missing paramater. Penalties for violations cited in a second NOV will be set at an amount which is higher than the first penalty, up to a base penalty per DMR of \$1,000 plus twice the cost of analysis for each missing parameter. If the Division can demonstrate that there was a good chance that effluent violations occurred for any parameter for which results were not reported, then the penalty shall be calculated in accordance with Section III.B.1. Such demonstration could be made by interpretation of operational data or could be made by showing that effluent violations for the subject parameter occurred before or after the period in question (or both) and that it was unlikely that the effluent could have been in compliance during the period in question.

In situations where the permittee failed to report all available data there will be no penalty unless the inclusion of the unreported data resulted in an increase in the actual value which, in turn, resulted in an unreported violation or a greater degree of violation. In such cases the NOV will be amended to reflect the new value and the penalty for the effluent violation will be twice that which was calculated using the procedure outlined in Section III.A.

- b. Penalties For Delinquent Or Improperly Completed Annual Reports - The penalty for delinquent or improperly completed annual reports shall be; up to \$250 per report if a properly completed report is submitted prior to the issuance of the NOV; \$250-\$500 per report if submitted within the timeframe identified in the CDO, and \$500-\$1,000 per report thereafter.
- c. Penalties For Other Administrative Non-Compliance - Penalties will be assessed under this category for failure to submit a compliance schedule item, failure to report non-DMR information, or violation of a control regulation which was not related to any effluent violation cited in the NOV. These violations might include; failure to install a flow measuring device, failure to submit a spill plan, failure to submit a one-time analysis, violations of pretreatment conditions, reporting violations, etc.

Penalties will be assessed on a per-day basis taking into consideration: (1) actual or potential impacts on the facility's ability to meet other permit conditions; (2) the impact the violation had on the monitoring and reporting of treatment system performance and/or effluent data; and (3) the size (design flow) and operator certification level of the facility. The maximum daily penalty for these types of administrative violations will be \$100 unless an economic benefit has been gained. Penalties to offset the economic benefit may be sought in addition to penalties sought under Section III.B.1. of this policy, where the Division determines that it is appropriate to do so.

Where the permittee has failed to comply with a previous CDO for violations described in this paragraph, the penalty for such violations may be increased by up to one hundred percent.

C. Initial Penalty Calculation

The initial penalty will be the sum of the penalties for effluent and administrative violations along with any additional penalty based on an economic benefit to the violator as described in this section. This penalty will represent the Division's starting point in negotiating the terms of any agreement with the violator. Any reduction in the penalty, as discussed in Section IV. will depend upon the actions taken by the violator to insure that permanent compliance is achieved.

1. Penalty For Effluent Violations - The penalty for effluent violations will be determined by calculating a penalty for each day of violation and totalling the resulting figures.

For calculation purposes the number of "days of violation" will be determined as follows:

<u>Type of Effluent Violation</u>	<u>Days of Violation</u>
30-Day Average	1 day of violation for each day in the month, the number of days of sampling required in the month by the permit for the violated parameter, or the actual number of samples which exceeded the 30-day average limitation where individual sample data is available. See discussion on page 9.
7-Day Average	7 days of violation, the number of days of sampling required in a 7-day period by the permit for the violated parameter, or the actual number of samples which exceeded the 7-day average limitation where individual sample data is available. See discussion on page 9.
Calculated 30-day Minimum and Daily or instantaneous Minimum/Maximum	Number of actual readings or calculated values which violated the identified limitation.
Daily Average	One day of violation per day that the daily average limit was exceeded.
Yearly Total	Number of individual daily samples which exceeded a thirty day average limitation or the number of individual samples required by the permit during the year where individual sample data is unavailable.
Discharging Without a Permit	Number of documented days the unpermitted discharge took place as cited in the NOV. Where the circumstances are such that the discharge could not have been terminated between the documented days, then the intervening days may also be cited.

The methodology of using the number of samples for determining the number of days of violation was developed in order to reflect the Division's position that penalties for smaller dischargers, who may only be required to sample once a month, should not be as great as those for larger dischargers.

This is the option which will generally be used unless the violations are of a magnitude that the penalties calculated using this approach are not commensurate with the damage to the environment plus any identified economic benefit.

At its discretion, in any case, the Division may equate the number of days of violation to the number of days in the averaging period (eg. 30 days of violation for an exceedance of a 30-day average permit limitation). In recognition of the impact on a large facility's operating budget, sampling frequencies for certain parameters (generally metals and organics) may be set at a lower level than those for parameters whose analyses are less costly. Violations of permit limits for these parameters are more likely to cause an environmental impact and the use of this approach will be more prevalent in these situations.

Where penalties for administrative violations have been calculated on a "per-day" basis (Parts III.B.1 and III.B.2.c.) these penalties will be added to any penalties for effluent violations for any calendar day during which both types of violations were cited. The penalty amount shall not exceed \$10,000 for any single calendar day. Once this has been done, any administrative penalties calculated on a "per violation" basis will be assigned to other days within the appropriate reporting period. Once again, the total penalty for those days cannot exceed \$10,000.

Each "day of violation" will be assigned to the calendar day on which the effluent sample was taken unless the sample date is not provided to the Division. In cases where sample dates are not provided, and where multiple parameters were violated during the same period (30-day, 7-day, etc.), the Division may assume that the samples for individual parameters were obtained on separate calendar days during that period. The potential damage component, the fault component, and the history component for each day of violation will then be totalled to give that day's penalty for effluent violations.

2. Economic Benefit Of Non-Compliance - Where the violator has benefited economically from non-compliance, through savings on delayed design and construction costs, monitoring costs, etc., the violations are considered to be more serious and will be dealt with in one of two ways.

- a. Where the Division has determined, using available information on a qualitative basis, that an economic benefit was realized, but it appears that the benefit may not be significant in comparison to the total penalty within the fault category, the penalty attributable to the economic benefit will be accounted for by increasing the penalty within the fault category. This increase shall come in one of two ways:
  - i. Category 2 violations shall be "moved up" one category into category 3.
  - ii. Category 3 violations shall be increased to the maximum allowable \$3,000/day of violation level.
- b. If the qualitative analysis, or a preliminary quantitative analysis where adequate data is available, indicates that a substantial economic benefit was realized, a detailed accounting of the economic benefit will be made using EPA's BEN program or a similar procedure. The initial penalty shall then be set at the sum of the penalties for the effluent violations and administrative violations, plus the economic benefit.

#### IV. Final Penalty/Compliance Negotiations

- A. Returning to Compliance - Once the initial penalty has been calculated, the Division and the violator will discuss the potential civil penalty (in a meeting, via letter, or by phone) along with the steps which will be taken to eliminate the non-compliance. Where improvements to the facility are required to eliminate effluent violations the violator will be required to submit a schedule for completing the necessary work. If the Division finds the schedule to be reasonable it will be inserted into the CDO or a settlement agreement and interim limitations may be granted for those parameters for which compliance cannot be immediately attained. Where improved operation and maintenance will bring the facility into compliance, a schedule of compliance may be given, depending upon the Division's determination of a reasonable length of time necessary to implement the necessary changes.

Administrative non-compliance will be dealt with in one of two ways:

1. Where violations of compliance schedules have occurred the order may be amended to include a revised schedule. A revised schedule may be denied if the violator does not provide adequate justification for the delay in meeting the original schedule requirements.

2. Where adequate justification is not provided, the violator is expected to expedite completion of the schedule items or face additional civil or judicial action. Other administrative non-compliance, such as failure to submit monthly or annual reports, is expected to be corrected prior to or within a short period after the NOV is issued.
- B. Mitigating Circumstances - The Division's ultimate goal in taking an enforcement action is to bring a facility into compliance, thereby protecting the beneficial uses of the affected state waters. Therefore, by adhering to a schedule which may be included in the amended order, the violator will receive up to a fifteen percent deduction from the penalty for effluent violations. The deduction will not apply to administrative penalties except where the administrative penalty has been assessed as a percentage of the potential damage penalty for effluent violations. Consideration of a deduction may be given where the violator has returned to compliance as a result of additional short-term expenditures for: temporary or rental equipment, additional operational assistance, additional chemical feed equipment, or expenditures for other similar items. Such expenditures must be over and above those necessary for everyday operation and maintenance.

Where a violator has taken steps beyond those normal or short-term actions required to return to compliance, by replacing rather than repairing a problem-causing unit process, by making unscheduled process-improving modifications to unit processes other than those which caused the current violations, etc., up to fifty percent of the penalty for effluent violations may be deducted. Normal maintenance or replacement of equipment will not be considered for this deduction.

In exceptional cases, where the violator has returned to compliance and agrees to complete a special project, up to one hundred percent of the penalty for effluent violations may be waived. Such special projects shall be outside of any improvement to be made to the treatment facility, cannot directly benefit the violator, and must result in an identifiable benefit to water quality. In considering the amount of penalty to be waived the Division will use the following guidelines:

1. The maximum amount of reduction shall not exceed fifty percent of the actual cost of the project.
2. The project should be identified and commenced by the violator and must be primarily designed to benefit the environment rather than to benefit the violator.

In general, the reduced penalty amount (effluent and administrative) will generally not be less than any identified economic benefit of non-compliance except where an extraordinary effort or environmentally enhancing project has been completed.

C. Additional Penalty Reductions - After considering all of the previously mentioned factors and circumstances the Division will have developed a fully defensible penalty, which reflects the degree of noncompliance, for recommendation to the Assistant Director. At this point the only factors which will be considered for further reduction of the penalty are the violator's ability to pay and the relative strength of the Division's case should the violator appeal the amount of the penalty.

1. Ability To Pay - The Division will evaluate the ability of the violator to pay the proposed civil penalty and to pay for the proposed measures which will bring about long-term compliance. The Division will carefully analyze this factor where it appears that the violator can convincingly demonstrate an inability to pay a given penalty. The violator has the principal burden of establishing a claim of inability to pay. The Division typically will seek to settle for as high an amount which it believes the violator can afford without seriously jeopardizing its ability to continue operations and still achieve compliance, unless the violator's behavior has been exceptionally culpable, recalcitrant or threatening to human health or the environment. The Division, in assessing the violator's ability to pay, may consider payment of the penalty over a period of two to three years in order to insure that as much of the original penalty amount as possible is collected.

Many factors often have a significant impact on ability to pay and may justify a reduction of a penalty. For example, the Division may consider high user fees, high percentage of local funds spent on a treatment facility, low bond rating, low per capita income, low total of population served by the facility, bankruptcy, etc., in evaluating an "inability to pay" claim. Typically, these factors will occur in smaller municipalities. In order to provide a consistent approach to the "bottom line" for penalties for small municipalities, the Division will generally consider the cost of providing wastewater treatment as a percentage of the overall available revenue (eg. user fee/per capita income).

2. Litigation Considerations - The Division will evaluate every penalty with a view toward the potential for protracted litigation and attempt to ascertain the maximum civil penalty that the Commission or the district court is likely to impose if the amount recommended by the Assistant Director is appealed. The Division will take into account the inherent strength of the case considering, for example, the probability of proving questionable violations, the probability of acceptance of an untested legal construction, the potential effectiveness of the Division's witnesses, and the potential strength of the defendant's equitable defenses.

Examples of equitable considerations which may lead to adjustment of the penalty amount include the following: 1) whether the violator reasonably, conclusively, and detrimentally relied on the Division's, EPA's, or a local agency's representations or actions; 2) whether the violator has requested modification of its final effluent limits (related to, for example, pending industrial variance decisions, new wasteload allocations, etc.); 3) whether the violations are clearly attributable to accepting new discharges from nearby, non-complying jurisdictions; and 4) whether compliance has been delayed in an unusual or unreasonable manner by the Division or other regulatory agencies, through no fault of the violator.

These equitable considerations will justify mitigation only to the extent that they directly caused or contributed to the violations. In such cases, the Division may reduce the amount of the civil penalty it will accept at settlement to reflect these considerations.

- D. Negotiated Settlement - If the Division and the violator can reach agreement on the amount of the civil penalty, then the Division will reflect this amount, and any other agreed upon conditions, in a stipulated agreement which will be signed by both parties as well as the Assistant Director. The final penalty in such cases shall not be less than the economic benefit plus some additional amount in proportion to the calculated penalties for effluent and administrative violations, unless the violator's ability to pay would make collection of such a penalty impossible.

The Division shall prepare a fully documented summary of the circumstances that were considered in arriving at the final penalty amount. In the majority of cases, the Division will expect to recover the identified economic benefit from violations at "major" facilities.

BENEFICIAL USE TABLE

POLLUTANT	AQUATIC	LIFE	WATER	AGRICU-	RECREATION		EFFLUENT REUSE
	CL 1	CL 2	SUPPLY	LITURAL	CL 1	CL 2	
Flow	b	b	b	b	b	b	b
Metals or Cyanide	8	6	9a	5a	0	0	0
Sulfide, NO <sub>2</sub> , Ammonia, CL <sub>2</sub>	8	6	0	0	0	0	0
Carcinogens	8	7	12	6	8	8	0
Mutagens; Target Organ Toxics	8	7	12	6	8	8	0
Pesticies; Herbicides	11	8	12	8a	0	0	0
Other Toxic Organics	8	7	9a	5a	0	0	0
Hazardous Substances(c)	10	7	9a	5a	0	0	0
Nitrate, Fluoride	0	0	6a	0	0	0	0
Boron, Chloride, Sulfate	0	0	0	2a	0	0	0
BOD <sub>5</sub> , D.O.	8a	5a	0	0	0	0	0
pH	6	4	0	2a	4a	2a	0
Fecal Coliform	0	0	0	0	4	2	4
Total Coliform	0	0	0	0	4	2	4
Phosphorus	8	6	0	0	0	0	0

- a To be used only if protection of the identified beneficial use was the basis for the limitation.
- b Violations of the flow limit will generally be assigned a point value between zero and two. In cases where the flow violations were so great that an in-stream impact may have been caused, the flow violation will be assigned the highest point value based on any parameters whose calculated in-stream concentration (using the low-flow and ambient pollutant concentration established in the permit) exceeded the stream standard.
- c Hazardous substances as defined in 40 CFR, Part 261.

FIGURE 1.

TECHNOLOGY-BASED LIMITS  
(VIOLATION DOES NOT FALL UNDER BENEFICIAL USE TABLE, FIGURE 1)

<u>PARAMETER</u>	<u>POINTS</u>
BOD	4
TSS	3
Other Nontoxics	3
Metals	4
Flow; Fecal Coliform	1a
Other Toxics	4
BOD, and TSS & Removal	1

a Only used where no water quality-based limits are in effect.

FIGURE 2.

PERCENT EXCEEDANCE \*

<u>Actual Flow (MGD)</u>	<u>L 0-20</u>	<u>L 20-50</u>	<u>L 50-90</u>	<u>L 90-140</u>	<u>L 140-200</u>	<u>L 200</u>
L 0-0.05	1.02	1.05	1.09	1.14	1.20	1.30
L 0.05-0.10	1.05	1.08	1.12	1.17	1.24	1.33
L 0.10-0.25	1.10	1.13	1.18	1.23	1.29	1.40
L 0.25-0.50	1.20	1.24	1.28	1.34	1.41	1.52
L 0.50-1.00	1.35	1.39	1.44	1.51	1.59	1.72
L 1.00-2.50	1.50	1.54	1.60	1.68	1.76	1.90
L 2.50-10.00	1.75	1.80	1.87	1.96	2.06	2.23
L 10.00	2.00	2.06	2.12	2.23	2.34	2.50

a for flow violations, where in-stream exceedances of the standards were calculated, the percent exceedance shall be based on the amount the calculated in-stream concentration exceeded the stream standard.

L = greater than

FIGURE 3.



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**

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

**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<sub>Total</sub> + Fault + History}

{Potential Damage<sub>Total</sub> = Potential Damage<sub>Violation 1</sub> + Potential Damage<sub>Violation 2</sub> + Potential Damage<sub>Violation 3...</sub>}

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*).

<b>Multi-Day Violation Matrix</b>				
<b>Duration of Violations (in Days)</b>				
<b>2-10</b>	<b>11-50</b>	<b>51-100</b>	<b>101-200</b>	<b>&gt;200</b>
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 15<sup>th</sup> deadline. The Division issued the facility a Notice of Violation/ Cease and Desist Order (“NOV/CDO”) on May 15<sup>th</sup> of the same year and, in response to the NOV/CDO, the facility submitted its annual report on June 15<sup>th</sup>, 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.*

<i>Day 1</i>	<i>(\$1,537.50)</i>	<i>=</i>	<i>\$1,537.50</i>
	<i>Total Base Gravity Penalty</i>	<i>=</i>	<i>\$1,537.50</i>

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**

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

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

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

**Part I – Base Penalty Calculation**

**A. Potential Damage Component**

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

Attachment A

**B. Fault Component**

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

**C. History Component**

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

**Part II – Determination of Days of Violation**

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

**Part III – Determination of Multi-Day Penalty Amount**

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

**Part IV – Base Penalty Total**

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

Attachment A

**Part V – Application of Aggravating or Mitigating Factors**

	<b>Aggravating / Mitigating Factors</b>	<b>% Base Penalty Increase or Decrease</b>	<b>Amount in Dollars</b>
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
<b>Line 22</b>	<b>Adjusted Base Penalty (Sum of Line 15 + Line 21)</b>		<b>\$0.00</b>

**Part VI– Economic Benefit Consideration**

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

**Part VII – Violation Penalty Total**

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

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**

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

Footnote<sub>1</sub> – Per day of violation

Footnote<sub>2</sub> – Single amount

Footnote<sub>3</sub> – 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**

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

*\* (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**

<b>TABLE 3 – FAULT COMPONENT</b>						
<b>Facility/ Permit Type</b>	<b>Industrial (Number of Employees)</b>	<b>0-5</b>	<b>6-20</b>	<b>21-50</b>	<b>51-100</b>	<b>&gt; 100</b>
	<b>Construction (Size in Disturbed Acres)</b>	<b>0-10</b>	<b>11-25</b>	<b>26-50</b>	<b>51-100</b>	<b>&gt;100</b>
<b>Fault Category</b>	<b>Category 1</b> – Any situation where the violator could not reasonably have been expected to be aware of the circumstances that led to the violation(s).	<b>\$0- \$200</b>	<b>\$201- \$400</b>	<b>\$401 - \$600</b>	<b>\$601- \$800</b>	<b>\$801- \$1000</b>
	<b>Category 2</b> – 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.	<b>\$201- \$400</b>	<b>\$401- \$800</b>	<b>\$801 - \$1200</b>	<b>\$1201- \$1600</b>	<b>\$1601- \$2000</b>
	<b>Category 3</b> – 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.	<b>\$401- \$600</b>	<b>\$601- \$1200</b>	<b>\$1201- \$1800</b>	<b>\$1801- \$2400</b>	<b>\$2401- \$3000</b>

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

<b>TABLE 4 – HISTORY COMPONENT</b>						
<b>Facility/ Permit Type</b>	<b>Industrial (Number of Employees)</b>	<b>0-5</b>	<b>6-20</b>	<b>21-50</b>	<b>51-100</b>	<b>&gt; 100</b>
	<b>Construction (Size in Disturbed Acres)</b>	<b>0-10</b>	<b>11-25</b>	<b>26-50</b>	<b>51-100</b>	<b>&gt;100</b>
<b>History Category</b>	<b>Category 1</b> – 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.	<b>\$200</b>	<b>\$400</b>	<b>\$600</b>	<b>\$800</b>	<b>\$1000</b>
	<b>Category 2</b> – 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.	<b>\$160</b>	<b>\$320</b>	<b>\$480</b>	<b>\$640</b>	<b>\$800</b>
	<b>Category 3</b> – 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.	<b>\$120</b>	<b>\$240</b>	<b>\$360</b>	<b>\$480</b>	<b>\$600</b>
	<b>Category 4</b> – 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.	<b>\$80</b>	<b>\$160</b>	<b>\$240</b>	<b>\$320</b>	<b>\$400</b>
	<b>Category 5</b> – 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).	<b>\$40</b>	<b>\$80</b>	<b>\$120</b>	<b>\$160</b>	<b>\$200</b>

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. These may include, but are not limited to, distance to surface waters, implementation of a stormwater management system, documented environmental impacts, violation awareness, steps taken beyond normal actions required to return to compliance, etc. 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.**

**\*\* Interim Draft Document / June 9, 2008 \*\***  
**Updated September 2012 (Attachment B)**



---

**Colorado Department  
of Public Health  
and Environment**

**Water Quality Control Division**

**ANIMAL FEEDING OPERATIONS**  
**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 Animal Feeding Operation violations.*

---

Steven H. Gunderson, Director  
Water Quality Control Division

---

Date

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

**Animal Feeding Operations – 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 ..... 9**

**VI. ABILITY TO PAY ..... 10**

**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**

**ANIMAL FEEDING OPERATIONS – CIVIL PENALTY POLICY**

**I. INTRODUCTION**

The fundamental purpose of the Colorado Department of Public Health and Environment’s (“Department”) Water Quality Control Division (“Division”) and Environmental Agriculture Program (“Ag Program”) is to ensure that the discharge of pollutants from regulated animal feeding operation (“AFO”) facilities, including Concentrated Animal Feeding Operations (“CAFOs”) and Housed Commercial Swine Feeding Operations (“HCSFOs”), does not cause pollution of state or U.S. waters, outside of what’s allowed by a permit or regulation. The Colorado Discharge Permit System Regulations (Regulation 61) require all HCSFOs to obtain an individual discharge permit to ensure that the storage and land application of waste is done in a responsible manner. In addition, Regulation 61 requires CAFOs to apply for a discharge permit prior to discharging manure or process wastewater to waters of the U.S., except for agricultural stormwater discharges. The Animal Feeding Operations Control Regulation (Regulation 81) requires all CAFOs to protect groundwater, and AFOs to utilize Best Management Practices (“BMPs”) to protect waters of the state.

This civil penalty policy is developed by the Water Quality Control Division (“Division”) to implement the Department’s penalty authority established in the Colorado Water Quality Control Act (the “Act”) as it relates to violations of AFO 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 AFO violations.

The purpose of this civil penalty policy is to ensure that penalties for AFO 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 AFO penalty calculation, enforcement personnel shall utilize the AFO 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 an AFO penalty amount under this policy is a four-step process and can be illustrated by the following equation:

$$\text{AFO Civil Penalty} = \{\text{Base Gravity Penalty (x Days of Violation Multiplier, As Applicable)}\} \\ [+/- \text{Aggravating/Mitigating Factors}] + \text{Economic Benefit}$$

$$\{\text{Base Gravity Penalty} = \text{Potential Damage}_{\text{Total}} + \text{Fault} + \text{History}\}$$

$$\{\text{Potential Damage}_{\text{Total}} = \text{Potential Damage}_{\text{Violation 1}} + \text{Potential Damage}_{\text{Violation 2}} + \text{Potential Damage}_{\text{Violation 3}} \dots\dots\dots\}$$

Step 1 - Determine the Base Gravity Penalty: The base gravity penalty incorporates a value for three components: (A) Potential Damage (based on type of operation or activity 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 AFO 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 procedures 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 or implementing a required plan/protocol (i.e., Swine Waste Management Plan, Monitoring Plan, Operations Plan, Financial Assurance Plan, Nutrient Management Plan, Standard Operating Procedures, intervention protocol, etc.);
- C. Cost associated with purchasing, implementing and/or maintaining Best Management Practices, impoundments, control structures and conveyances;

- D. Cost associated with developing or submitting required reports/documents (i.e., intervention protocols, spill reports, Quarterly Monitoring Reports, Annual Reports, permit compliance schedule items, etc.);
- 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.
- H. Cost associated with contamination clean up/remediation (e.g., of spills)

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 AFO 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 in which a violator has demonstrated continued non-compliance for consecutive days without documented efforts to comply with regulations and/or permit requirements. Generally, the Division will apply the Multi-Day Violation Matrix for the following types of violations:

- A. Operating Without a Permit
- B. Failure to Submit a Plan for Division Approval, Comply with an Approved Plan or Submit a Revised Plan for Division Approval
- C. Failure to Submit an Intervention Protocol for Division Approval or Implement an Approved Intervention Protocol
- D. Failure to Certify Manure Removal from an Impoundment in Accordance with an Approved Standard Operating Procedure

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*).

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

Example Calculation:

For illustration, consider an owner/operator of a HCSFO that has failed to implement an approved intervention protocol for previously identified exceedances of the agronomic rate of application. The intervention protocol was approved 4 months ago but the HCSFO had yet to implement the provisions of the approved intervention protocol. The duration of the violation has been determined to be 120 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 (\$1800 in this instance), from the AFO Base Gravity Penalty Value Tables found in Attachment B, the base gravity penalty amount is \$2,425.00 (Potential Damage + Fault + History). The multi-day base gravity penalty is then calculated using the Multi-Day Violation Matrix as follows:

Day 1	(\$2425.00)	= \$	2,425.00
+ Days 2-10	(\$2425.00) X (9 days) X (50%)	= \$	10,912.50
+ Days 11-50	(\$2425.00) X (40 days) X (40%)	= \$	38,800.00
+ Days 51-100	(\$2425.00) X (50 days) X (30%)	= \$	36,375.00
+ Days 101-120	(\$2425.00) X (20 days) X (20%)	= \$	9,700.00
	<u>Multi-Day Base Gravity Penalty</u>	= \$	<u>98,212.50</u>

For violations that have persisted 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. Unauthorized Discharge of Pollutants to State Waters, including Waters of the U.S.
- B. Failure to Install, Maintain, Use, or Properly Select Best Management Practices
- C. Failure to Properly Design, Install, or Maintain Impoundments/Conveyance Structures
- D. Exceedance of the Agronomic Application Rate

Generally, for these types of violations the Division will calculate the number of days of violation by determining: the number of unauthorized discharges to state waters; the number of days between identified noncompliance and the regulated entities return to compliance, regulatory agency inspection events for which BMP deficiencies were noted; the number of times in which BMP deficiencies were identified by other means; the number of identified agronomic rate exceedances; the number of times the AFO failed to report spills or pollutant discharges; and/or the number of times the AFO failed to submit required reports/documents (*see example calculation below*).

Example Calculation:

*For illustration, consider an owner/operator of a HCSFO that has failed to submit its QMRs following each calendar quarter. The owner/operator fails to submit its QMRs for four consecutive quarters. In this situation the Division will generally assess three days of violation for the owner/operator's failure to submit the required reports. 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 (\$1800 in this instance), from the AFO Base Gravity Penalty Value Tables found in Attachment B, the base gravity penalty amount is \$3,675.00 (Potential Damage + Fault + History). The multi-day penalty is then calculated as follows:*

Day 1	(\$3675.00)	= \$ 3,675.00
+ Days 2-4	(\$3675.00) X (3 days)	= \$11,025.00
	<u>Multi-Day Base Gravity Penalty</u>	<u>= \$14,700.00</u>

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

- A. Failure to Properly Close and/or Remediate Facility?**
- B. Failure to Maintain Required Records or Documents
- C. Failure to Report Spills or Pollutant Discharges
- D. Failure to Submit Required/Requested Reports and Documents (i.e., intervention protocols, Quarterly Monitoring Reports, Annual Reports, permit compliance schedule items, etc.)
- E. Other Administrative Violations

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

Example Calculation:

For illustration, consider an owner/operator of a HCSFO that has failed to maintain a record of spills that occurred at its facility during the past year. 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 (\$1800 in this instance), from the AFO Base Gravity Penalty Value Tables found in Attachment B, the base gravity penalty amount is \$5,550.00 (Potential Damage + Fault + History). Without applying the multi-day factor, the base gravity penalty for this violation would be \$5,550.00.

Day 1	(\$5,550.00)	= \$5,550.00
	Total Base Gravity Penalty	= \$5,550.00

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 or permit 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 or a permit would constitute independent and substantially distinguishable violations.

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

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

A violator's failure to satisfy one regulatory or permit requirement may violate numerous other independent regulatory/permit requirements. In cases 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 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 required pollution prevention plan 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 applicable AFO 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

**AFO PENALTY COMPUTATION WORKSHEET**

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

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

Type of Facility: <i>[Type]</i>	Number of Animal Units: <i>XX</i> A.U.
---------------------------------	--

**Part I – Base Penalty Calculation**

**A. Potential Damage Component**

	Violation Type	Adjustment	Amount in Dollars
Line 1	<b>Operating Without a Permit</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 2	<b>Failure to Implement Approved Plan or Submit Revised Plan</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 3	<b>Failure to Implement Approved Intervention Protocol</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 4	<b>Failure to Certify Removal of Manure from Impoundment</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 5	<b>Failure to Install, Maintain or Properly Select Best Management Practices</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 6	<b>Failure to Properly Design, Install, or Maintain Impoundments or Conveyance Structures</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 7	<b>Unauthorized Discharge of Pollutants to State Waters</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 8	<b>Exceedance of Agronomic Rate of Application</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 9	<b>Failure to Report Spills or Pollutant Discharges</b>		\$0.00
	<i>Adjustment Justification:</i>		

**Attachment A**

	<b>Violation Type</b>	<b>Adjustment</b>	<b>Amount in Dollars</b>
Line 10	<b>Failure to Submit Required / Requested Reports or Documents</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 11	<b>Failure to Properly Close and/or Remediate Facility</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 12	<b>Failure to Maintain Required Records or Documents</b>		\$0.00
	<i>Adjustment Justification:</i>		
Line 13	<b>Other Administrative Violations</b>		\$0.00
	<i>Adjustment Justification:</i>		
<b>Line 14</b>	<b>Potential Damage Total (Sum of Lines 1 through 13)</b>	<i>(Not to exceed \$6000/day)</i>	<b>\$0.00</b>

**B. Fault Component**

		<b>Amount in Dollars</b>
Line 15	<b>Fault: Category X</b>	<i>(Not to exceed \$3000/day)</i>
	<i>Justification:</i>	
		<b>\$0.00</b>

**C. History Component**

		<b>Amount in Dollars</b>
Line 16	<b>History: Category X</b>	<i>(Not to exceed \$1000/day)</i>
	<i>Justification:</i>	
		<b>\$0.00</b>

**Part II – Determination of Days of Violation**

		<b>Days of Violation</b>
Line 17	<b>Total Days of Violation</b>	
	<i>Justification:</i>	

**Part III – Determination of Multi-Day Penalty Amount**

		<b>Amount in Dollars</b>
Line 18	<b>Multi-Day Penalty Amount</b>	\$0.00
	<i>Calculations:</i>	

Attachment A

**Part IV – Base Penalty Total**

			Amount in Dollars
<b>Line 19</b>	<b>Base Penalty = Potential Damage + Fault + History (Sum of Line 14 + Line 15 + Line 16; or Line 18 )</b>		<b>\$0.00</b>

**Part V – Application of Aggravating or Mitigating Factors**

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 20	Factor A: Voluntary and Complete Disclosure of Violations <i>Justification:</i>	0%	\$0.00
Line 21	Factor B: Full and Prompt Cooperation <i>Justification:</i>	0%	\$0.00
Line 22	Factor C: Environmental Compliance Program <i>Justification:</i>	0%	\$0.00
Line 23	Factor D: Intentional, Reckless or Negligent Violations <i>Justification:</i>	0%	\$0.00
Line 24	Factor E: Other Aggravating or Mitigating Circumstances <i>Justification:</i>	0%	\$0.00
Line 25	Sum of Lines 20 through Line 24		-/+ \$0.00
<b>Line 26</b>	<b>Adjusted Base Penalty (Sum of Line 19 + Line 25)</b>		<b>\$0.00</b>

**Part VI – Economic Benefit Consideration**

			Amount in Dollars
<b>Line 27</b>	<b>Economic Benefit</b>		<b>\$0.00</b>
	<i>Justification:</i>		

Attachment A

**Part VII – Violation Penalty Total**

			Amount in Dollars
Line 28	Civil Penalty: (Sum Line 26 + Line 27)		\$0.00

**Part VIII – Ability to Pay Adjustment**

			Amount in Dollars
Line 29	Ability to Pay Reduction:		\$0.00
	Justification:		

**Part IX – Final Adjusted Penalty**

			Amount in Dollars
Line 30	Total Civil Penalty: (Sum Line 28 + Line 29)		\$0.00

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

<b>TABLE 1 - POTENTIAL DAMAGE COMPONENT</b>						
<b>Facility Type</b>	<b>Type of Operation</b>	<b>AFO</b>		<b>CAFO</b>		<b>HCSFO</b>
	<b>Size of Operation</b>	<b>Small</b>	<b>Medium</b>	<b>1,000 – 49,999 A.U.</b>	<b>≥ 50,000 A.U.</b>	
<b>Violation Type</b>	<b>Operating Without a Permit<sub>1</sub></b>	N/A	N/A	N/A	N/A	\$2000
	<b>Failure to Submit, Implement or Comply with Approved Plan or Submit Revised Plan<sub>1</sub></b>	\$100	\$200	\$300	\$400	\$500
	<b>Failure to Submit, Implement or comply with Approved Intervention Protocol<sub>1</sub></b>	N/A	N/A	N/A	N/A	\$500
	<b>Failure to Certify Manure Removal from Impoundment<sub>1</sub></b>	N/A	N/A	\$1000	\$1500	N/A
	<b>Failure to Install, Maintain or Properly Select Best Management Practices<sub>1</sub></b>	\$500	\$750	\$1000	\$1500	N/A
	<b>Failure to Properly Design, Install, or Maintain Impoundments / Conveyance Structures<sub>1</sub></b>	N/A	N/A	\$100	\$200	\$1000
	<b>Exceedance of Agronomic Rate of Application<sub>1</sub></b>	N/A	N/A	\$5000	\$5000	\$5000
	<b>Failure to Report Spills or Pollutant Discharges<sub>2</sub></b>	\$1000	\$2000	\$5000	\$5000	\$5000
	<b>Failure to Submit Required / Requested Reports / Documents<sub>2</sub></b>	\$1000	\$2000	\$5000	\$5000	\$5000
	<b>Failure to Properly Close and/or Remediate Facility<sub>2</sub></b>	\$1000	\$2000	\$3000	\$4000	\$5000
	<b>Failure to Maintain Required Records or Documents<sub>2</sub></b>	\$250	\$500	\$1000	\$1500	\$1500
	<b>Other Administrative Violations<sub>2</sub></b>	\$250	\$500	\$1000	\$1500	\$1500

Footnote<sub>1</sub> per day of violation  
Footnote<sub>2</sub> single amount

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

<b>TABLE 2 – POTENTIAL DAMAGE COMPONENT (Use/Harm Adjustments)</b>	<b>Actual or Potential Harm to Public Health or the Environment *</b>				
<b>Receiving Water Beneficial Use Classification</b>	<b>Minor</b>	<b>Minor/ Moderate</b>	<b>Moderate</b>	<b>Moderate/ Major</b>	<b>Major</b>
<b>Agricultural</b>	<b>-50%</b>	<b>-40%</b>	<b>-25%</b>	<b>-5%</b>	<b>+5%</b>
<b>Recreation – CL2</b>	<b>-40%</b>	<b>-30%</b>	<b>-15%</b>	<b>+0%</b>	<b>+10%</b>
<b>Recreation – CL1</b>	<b>-30%</b>	<b>-20%</b>	<b>+0%</b>	<b>+10%</b>	<b>+25%</b>
<b>Groundwater</b>	<b>-20%</b>	<b>-10%</b>	<b>+15%</b>	<b>+30%</b>	<b>+50%</b>
<b>Aquatic Life – CL2</b>	<b>-15%</b>	<b>+0%</b>	<b>+25%</b>	<b>+50%</b>	<b>+75%</b>
<b>Water Supply</b>	<b>-10%</b>	<b>+10%</b>	<b>+35%</b>	<b>+70%</b>	<b>+100%</b>
<b>Wetlands</b>	<b>-5%</b>	<b>+20%</b>	<b>+50%</b>	<b>+100%</b>	<b>+150%</b>
<b>Aquatic Life – CL1</b>	<b>+0%</b>	<b>+30%</b>	<b>+75%</b>	<b>+125%</b>	<b>+200%</b>

*\* (Considering, but not Limited to: Proximity to Surface or Ground Water, Contaminate Type, Quantity of Pollutants, Sensitive Species or Habitat, 303d Listed Segments, Size of Operation, Number of Counts of Violation)*

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

<b>TABLE 3 – FAULT COMPONENT</b>						
<b>Facility Type</b>	<b>Type of Operation</b>	<b>AFO</b>		<b>CAFO</b>		<b>HCSFO</b>
	<b>Size of Operation</b>	<b>Small</b>	<b>Medium</b>	<b>1,000 – 49,999 A.U.</b>	<b>≥ 50,000 A.U.</b>	
<b>Fault Category</b>	<b>Category 1</b> – Any situation where the violator could not reasonably have been expected to be aware of the circumstances that led to the violation(s).	<b>\$0-\$250</b>	<b>\$251-\$500</b>	<b>\$501-\$750</b>	<b>\$751-\$1000</b>	<b>\$751-\$1000</b>
	<b>Category 2</b> – 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.	<b>\$251-\$500</b>	<b>\$501-\$1000</b>	<b>\$1001-\$1500</b>	<b>\$1501-\$2000</b>	<b>\$1501-\$2000</b>
	<b>Category 3</b> – 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.	<b>\$501-\$750</b>	<b>\$751-\$1500</b>	<b>\$1501-\$2250</b>	<b>\$2251-\$3000</b>	<b>\$2251-\$3000</b>

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

<b>TABLE 4 – HISTORY COMPONENT</b>						
<b>Facility Type</b>	<b>Type of Facility</b>	<b>AFO</b>		<b>CAFO</b>		<b>HCSFO</b>
	<b>Size of Facility</b>	<b>Small</b>	<b>Medium</b>	<b>1,000 – 49,999 A.U.</b>	<b>≥ 50,000 A.U.</b>	
<b>History Category</b>	<b>Category 1</b> – 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.	<b>\$250</b>	<b>\$500</b>	<b>\$750</b>	<b>\$1000</b>	<b>\$1000</b>
	<b>Category 2</b> – 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.	<b>\$200</b>	<b>\$400</b>	<b>\$600</b>	<b>\$800</b>	<b>\$800</b>
	<b>Category 3</b> – 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.	<b>\$150</b>	<b>\$300</b>	<b>\$450</b>	<b>\$600</b>	<b>\$600</b>
	<b>Category 4</b> – 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.	<b>\$100</b>	<b>\$200</b>	<b>\$300</b>	<b>\$400</b>	<b>\$400</b>
	<b>Category 5</b> – 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).	<b>\$50</b>	<b>\$100</b>	<b>\$150</b>	<b>\$200</b>	<b>\$200</b>

Attachment C

**Water Quality Control Division  
AFO - 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 *Ag 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 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  
AFO - 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. These may include, but are not limited to, distance to surface waters, implementation of a wastewater management system, documented environmental impacts, violation awareness, steps taken beyond normal actions required to return to compliance, etc. 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.**