

Memorandum

From: Nathan J. Travis

To: CPNMD Board of Directors

Date: 4/17/2024

Re: WQCD settlement offer summary

Enforcement Action Summary

Violation Issued: August 8th

Covers Spills Occurring Between October 23rd 2020, June 22nd 2023 (7 events)

Note: CPNMD did not request a formal hearing, so this is considered a final agency action.

3 pathways to resolve a formal enforcement case.

1. **Informal Settlement Offer-** Division presents an offer including several conservative determinations for the purposes of settlement. CPNMD does have the option to negotiate settlement.
2. **Unilateral Penalty Order-** Does not contain the same conservative determinations included in the Informal Settlement Offer- CPNMD would either pay the penalty or appeal the penalty to administrative law judge.
3. **Supplemental Environmental Project-** In lieu of payment, CPNMD may identify and complete a supplemental beneficial project.
 - a. Final penalty amount must be set prior to coordination with SEP coordinator.
 - b. Cannot be already identified, budgeted, planned, or needed for compliance.
 - c. Must be completed in Douglas County
 - d. Different projects carry different mitigation factors (amount spent needed to satisfy requirement based on potential benefit to CPNMD)

Civil Penalty Calculation

Calculation is based on actual harm, potential harm, fault, compliance history, impact or threat to environment, financial benefit, and aggravating factors. As well as the duration of non-compliant events.

- **Settlement Considerations:** The Division did not include any actual harm, administrative, non-compliance history, or aggravating factors.

Each factor is given a category of varying degrees of severity tied to the maximum penalty amount (1-low, 2-mid, 3- high)

Fault- category 2 assigned (settlement consideration, category 3 fault was warranted)

Days of Violation- 8 days of violation

Base Penalty of \$78,752.00

Mitigating Factors-

Adhering to schedule 25% maximum deduction- Full 25% deduction applied due to CPNMD's prompt and full response, as well as the water quality testing, done. (\$19,688.00)

Going "above and beyond" actions needed to gain compliance 50% maximum deduction- Additional 25% deduction applied due to the work being done at lift stations that do not have SSO events. (\$19,688.00)

Total Deductions: \$39,376.00

Economic Benefit- Division will seek to recover cost saving realized by non-compliance by delaying activities that are required for compliance. Uses EPA financial model based on actual projects. Project costs are based on Kennedy Jenks cost estimates.

The compliance date ranges are part of the settlement offer, typically the compliance date would not be set until the project is completed.

Lift Stations 2&5- As a settlement consideration these sites were combined into one economic benefit category.

- Noncompliance date range February 3rd, 2021- March 20th 2022.
- Based on settlement considerations of compliance dates, the model showed a negative economic benefit.
- No economic benefit component was assigned.

Lift Station 3-

- Noncompliance date range November 11th, 2018- June 23rd 2023
- As a settlement consideration Division increased asset useful life from 15 years to maximum of 25 years, for purposes of estimated dollars saved by not keeping lift stations compliant.
- Economic benefit of **\$91,602.00**

Settlement Offer

Civil Penalty – Mitigating Factors + Economic Benefit = Final Penalty Calculation.

$(\$78,752.00) - (\$39,376.00) + (\$91,602.00) = \$130,978.00$

