

# Susquehanna River Basin Commission

*a water management agency serving the Susquehanna River Watershed*



**Policy No. 2003-02**

**August 14, 2003**

## **PROCEDURAL GUIDELINES FOR ADDRESSING COMPLIANCE WITH DOCKET CONDITIONS**

This provides general guidance in the implementation of the Commission's compliance program with regard to violations of conditions in approved dockets. It supplements the following, all of which are attached hereto: Commission Policy No. 96-01 (SRBC Civil Penalty Matrix) and Commission Policy No. 2000-01 (Policy and Guidance Statement for the Settlement of Civil Penalties/Enforcement Actions).

The Commission has broad Compact authority to enforce conditions addressing water withdrawals and consumptive uses throughout the basin. Within this authority, the Commission has established regulations (18 CFR, part 805) and adopted the policies referenced above to address non-compliance. The Commission reserves the discretion given to it under Sections 3.4(9), 3.5(5), 3.10, 15.2 and 15.17 of P.L. 91-575, in the review and approval of compliance actions. This guidance describes the steps that may be taken by the Commission staff with regard to certain administrative violations.

Once a project is approved by the Commission, there are three broad categories of violations which constitute possible non-compliance: 1) violation of administrative docket conditions (delinquent reports or payments); 2) violation of non-administrative docket conditions; or 3) adverse environmental harm. Regardless of the category of violation, it is the policy of the Commission to provide the project applicant (sponsor) an opportunity to take action to rectify or explain non-compliance before enforcement actions escalate. Ideally, the Commission desires voluntary cooperation from a project sponsor, and its enforcement provisions encourage self-reporting and early rectification of potential violations and non-compliance.

### **1. Violation of Administrative Docket Conditions (Delinquent Reporting or Payments)**

If applicable reports or payments, as prescribed in a docket approved by the Commission, are not received within the timeframe(s) specified in the docket, the Commission staff will issue a letter, generally within 15 days, notifying the sponsor of the delinquency. The Commission's Executive Director may assess a late fee pursuant to 18 CFR Section 803.33.

- a. Upon the project sponsor's failure to respond within the timeframe specified in the delinquency letter, the Commission, generally within 15 days, will issue a notice of violation (NOV).

- b. Upon the project sponsor's failure to respond within the timeframe specified in the NOV, the Commission, generally within 15 days, will issue a letter requesting the project sponsor's appearance at the next following regular or special Commission meeting to show cause why penalties should not be imposed or other action taken.
- c. Following the project sponsor's compliance with either the delinquency letter or the NOV, the Executive Director will evaluate the non-compliant action and will either conclude further enforcement action is not necessary, or will recommend a civil penalty to the Commission, considering factors in Section 805.25 of the regulations.

## **2. Violation of Non-Administrative Docket Conditions**

If Commission staff determines that a non-administrative condition of a docket has been violated by the project sponsor, the following will apply:

- a. If the project sponsor self-reports the violation and staff determines that the violation was beyond the control of the sponsor, continued for less than 5 days, has been corrected and is not likely to continue or recur, and did not result in environmental harm, staff will document the violation with a letter to the file and will report the violation to the Commission.
- b. If conditions in 2a. are not met, Commission staff, generally within 15 days, will issue a NOV requiring formal response and follow-up by the sponsor. Commission staff will request that the project sponsor remedy the violation or develop adequate plans to address the noncompliance.
- c. Upon the project sponsor's failure to respond within the timeframe specified in the NOV, the Commission, generally within 15 days, will issue a letter requesting the project sponsor's appearance at the next following regular or special Commission meeting to show cause why penalties should not be imposed or other action taken.
- d. Following the project sponsor's compliance with the NOV, the Executive Director will evaluate the non-compliant action and will either conclude further enforcement action is not necessary, or will recommend a civil penalty to the Commission, considering factors in Section 805.25 of the regulations.

## **3. Violation Causing Adverse Environmental Harm Violations**

In certain situations, a sponsor's actions or omissions and/or negligence may result in adverse environmental impacts. For example, neglecting to maintain a passby flow over time may cause reaches of stream to dry up and result in significant damage to aquatic resources. In these cases of adverse environmental impacts, actions will be referred directly to the legal staff to initiate and coordinate enforcement actions.

Attachments

# Susquehanna River Basin Commission

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**Policy No. 96-01**

**March 14, 1996**

## **SRBC CIVIL PENALTY MATRIX Penalties Per Day of Violation\***

	<b>Minor: \$50-\$250</b>	<b>Moderate: \$251-\$750</b>	<b>Severe: \$751-\$1,000</b>
<b>Previous Violations</b>	No previous violations	One previous violation	Multiple previous violations
<b>Intent</b>	Non-willful, non negligent	Non-willful, negligent	Willful
<b>Adverse Environmental Impacts</b>	No adverse environmental impacts	Limited adverse environmental impacts	Major adverse environmental impacts
<b>Cooperation</b>	Excellent cooperation/quick response	General cooperation & some delay in compliance	Little or no cooperation/slow response
<b>Economic Benefit</b>	No economic benefit	Minor economic benefit	Substantial economic benefit

\* §15.17 of the Compact specifies that "... in the event of a continuing offense, each day of such violation, attempt, or conspiracy shall constitute a separate offense." In most cases, violations discovered by staff have continued for a substantial number of days, thus forcing the Commission to impose relatively high penalties in most cases, even where the violation resulted in virtually no other harm. Thus, in practice the Commission would most likely and most often offer a violator a settlement by agreement in lieu of penalty as we are authorized to do under §805.27 of our project review regulations. This would avoid the imposition of an unrealistically high penalty. Nevertheless, the above matrix can serve as a guide when we are faced with a case where the imposition of a penalty is appropriate.

## **DESCRIPTIONS OF MINOR, LIMITED AND SEVERE VIOLATIONS AS CLASSIFIED IN THE SRBC PENALTY MATRIX**

The categories of “previous violations,” “intent,” and “cooperation” are self-explanatory and need no further elaboration. The other categories require some further criteria.

### ***Adverse Environmental Impacts***

**Minor** – No impacts whatsoever.

**Limited** - (Examples) Small or limited impact on fauna or flora with little or no effect on habitat; small and temporary impairment of a neighboring source of water; small and temporary threat or harm to public health, safety or welfare.

**Severe** – (Examples) Major impact on flora and fauna such as massive fish kill or large scale destruction of habitat; large or permanent impairment of a neighboring source of water; large or permanent threat or harm to public health, safety or welfare.

### ***Economic Benefit to Violator\****

**Minor** - \$50-\$250

**Moderate** - \$251-\$750

**Severe** - \$751 or more

\* Tied directly to the penalty amounts specified in the Compact; i.e. \$50-\$1,000 per violation.

# Susquehanna River Basin Commission

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**Policy No. 2000-01**  
**February 10, 2000**

## **POLICY AND GUIDANCE STATEMENT FOR THE SETTLEMENT OF CIVIL PENALTIES/ENFORCEMENT ACTIONS**

In settling cases in which the Commission could levy a civil penalty, the Commission shall first require the remediation of any environmental problems resulting from the noncompliance and shall coordinate the settlement with the affected signatory parties. Thereafter, the Commission shall be guided by the following principles:

1. The Commission shall continue its past policy of using settlements as the primary means of carrying out enforcement actions.
2. In completing settlement agreements, the Commission shall strive for consistency in cases with similar fact situations but, recognizing that each case is unique, the Commission shall be flexible in fashioning settlement terms.
3. All settlements shall be agreed to by the alleged violator, in writing, prior to the presentation of settlement terms to the Commission for final approval.
4. Where the term of non-compliance pre-dates January 1, 1993 and settlement amounts are calculated on the basis of consumptive use fees avoided by such non-compliance, settlement amounts shall, at a minimum, be equal to the amount of consumptive use fees otherwise payable for such usage since January 1, 1993.
5. All settlements shall state that the Commission reserves the right to reinstitute a civil penalty action against the alleged violator in the event the violator fails to carry out the terms of the settlement agreement.
6. Settlements may be based upon monetary payments or non-monetary actions, services or products of direct benefit to the public.
7. Except in cases involving an alternate payment schedule or non-monetary actions, a project docket incorporating a settlement shall not be presented to the Commission for review until the amount of the proposed settlement has been agreed to by the project applicant and paid to the Commission. Any amounts so paid shall be held in escrow pending approval of the docket by the Commission. Where the approved settlement amount is less than the amount proposed by Commission staff and tendered by the project applicant, the overpayment shall be reimbursed to the project applicant. Where the approved settlement amount is greater than the amount proposed by Commission staff and tendered by the project applicant, the docket approval shall not be effective until payment is made to the Commission of the

supplemental amount, which payment shall be made within 45 calendar days after receipt of the approved docket by the applicant. It shall also be a condition of such dockets that failure to tender the supplemental payment within the 45-day period shall render the settlement and docket approval null and void.

8. In deciding whether to settle a civil penalty case and determining the appropriate terms therefore, including, but not limited to, those related to the amount of any such penalty or the rate of interest applicable to settlement amounts, the Commission and its staff should be guided, but not bound, by the following primary and secondary considerations:

**PRIMARY CONSIDERATIONS:**

- Did the violation cause serious environmental or other public harm or was there the potential for serious harm?
- Has the violator realized a tangible financial benefit as a result of the violation? (If so, this should be recouped, along with any costs incurred by the Commission.)
- Were the alleged violator's actions willful or grossly negligent?
- What is the alleged violator's compliance history?

**SECONDARY CONSIDERATIONS:**

- Is there a particular need to deter such action by other potential violators?
- If the settlement involves something other than or in addition to a monetary payment, can a real and immediate environmental benefit be obtained?
- Is the violator a public or quasi-public entity such that taxpayers ultimately must pay the penalty or settlement amount?
- Does the violator have the ability to pay without incurring such serious effects as bankruptcy or plant closure resulting in the loss of employment?
- What types of settlements were reached or penalties levied in similar cases?
- Are there any unique factors that the Commission should consider?
- Would there be a heavy expenditure of time and resources to fully prosecute a civil penalties case with only a limited or uncertain prospect for success?