

PUBLIC NOTICE

The West Virginia Department of Environmental Protection (WVDEP) and Frasure Creek Mining, LLC have proposed a settlement of an Administrative Consent Order which resolves violation(s) of the West Virginia Water Pollution Control Act. In accordance with the proposed Consent Order, Frasure Creek Mining, LLC has agreed to pay administrative penalties and to comply with the Act. Final settlement is subject to comments received during the thirty (30) day period ending January 31, 2021. Comments regarding this Administrative Order may be submitted to: John Vernon, Assistant Deputy Director; West Virginia Department of Environmental Protection, Division of Mining and Reclamation, Inspection & Enforcement; 601 57th Street SE; Charleston, WV 25304; (304) 926-0499. Comments may also be submitted electronically to: DEP.Comments@wv.gov. The proposed settlement may be viewed at the following address: <http://www.dep.wv.gov/pio/Pages/Settlements,Ordersouttopublicnotice.aspx>



west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street
Charleston, WV 25304
Phone: 304-926-0440/Fax: 304-926-0456

Austin Caperton, Cabinet Secretary
dep.wv.gov

**ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Frasure Creek Mining, LLC
137 ½ East Main Street
P.O. Box 100
Oak Hill, WV 25901

DATE: December 22, 2020

ORDER NO.: M-19-286

INTRODUCTION

This Consent Order is issued by the Director of the Division of Mining and Reclamation (hereinafter “Director”), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Frasure Creek Mining, LLC (hereinafter “Frasure”).

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Frasure holds West Virginia National Pollution Discharge Permits (“NPDES”) issued by the West Virginia Department of Environmental Protection (“WVDEP”) for its mining and mining-related operations in West Virginia. Among those WVDEP NPDES Permits are WV1018922, WV1019520, WV1020625, WV1021931, WV1022300, WV1022946, WV1022997, WV1023811, WV1024400, WV1024736 and WV1026755 (“Permits”).
2. The WVDEP NPDES Permits are issued pursuant to the WVDEP’s authority under the West Virginia Water Pollution Control Act pursuant to authority delegated to the WVDEP by the United States Environmental Protection Agency under the Federal Clean Water Act for the issuance of WVDEP NPDES Permits.
3. Frasure has failed to submit required monthly Discharge Monitoring Reports (“DMRs”) information on its effluent discharge and other information to the WVDEP, pursuant to the terms and conditions of the WVDEP NPDES Permits. This Failure to Submit has occurred through not electronically filing the DMRs as prescribed by the Division of Mining and Reclamation (“the Division”).

4. Frasure has reported the quality of its discharges and other information to the WVDEP, pursuant to the terms and conditions of the WVDEP NPDES Permits. This reporting has occurred through electronic filing of Discharge Monitoring Reports (“DMRs”) as prescribed by the Division of Mining and Reclamation (“the Division”).
5. The Division has developed and maintains a database which compiles the information submitted in DMRs by holders of WVDEP NPDES Permits issued for mining and mining-related operations, including the information submitted by Frasure for the Permits (“the Database”). The Database has been used by the WVDEP to track compliance with WVDEP NPDES Permits for coal mining activities.
6. The WVDEP has evaluated agency records beginning with January 2016 through September 2020 regarding Frasure Permit(s), DMRs, and other related information, including information submitted by the Frasure at the request of WVDEP, and has completed an evaluation of Frasure DMRs compliance.
7. Based on its evaluation, the WVDEP has documented violations of the permitted effluent limits for the WVDEP NPDES Permits. The results of this investigation are included in Attachment 2-A and 2-B which list the WVDEP NPDES Permits that have violations.
8. Based on its evaluation, the WVDEP has documented the failure to report Monthly DMRs information required by the WVDEP NPDES Permits. The results of this investigation are included in Attachment 3 which list the WVDEP NPDES Permits that have violations.
9. Based on its evaluation, the WVDEP has documented 8 (eight) failure to submit payments for WVNPDES Annual Permit Fees (Coal).
10. Based on its evaluation, the WVDEP has documented 5 (five) Notices of Violations and 3 (three) Single Event Violations of WV1018922, WV1020625, WV1022300, WV1022946, WV1022997, WV1023811, and WV1024400.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code it is hereby agreed between the parties, and ORDERED by the Director:

1. Frasure shall immediately take all measures to initiate compliance with all terms and conditions of the Permit(s), Outlets(s) and Parameter(s) indicated in Table A below:

PERMIT	OUTLET(s)	PARAMETER
WV1020625	001, 019	Selenium, total recoverable
WV1022946	001	Selenium, total recoverable

2. Frasure shall comply with the Compliance Schedule and reporting requirements contained in Attachment 1.

3. Within 90 days of entry of this Order, Frasure shall submit for the Division's approval a proposed Corrective Action Plan (CAP) with schedule and possible applications for modification(s), outlining how and when Frasure will achieve compliance with Permit(s) limits for which compliance cannot be immediately achieved. This CAP shall address the Permit(s) listed in Table A of this Order. The CAP will include costs of construction, maintenance, and operation.
4. The Division shall review the proposed CAP and promptly notify Frasure of any comments it may have with the proposed CAP. The parties agree to work together to resolve any issues related by the Division with regards to the CAP. Within 30 days of receipt of the Division's approval of the CAP, Frasure shall begin the implementation of the plan in accordance with the scheduled provided therein. Upon approval, the CAP shall be considered a part of this Order.
5. Because of Frasure WVDEP NPDES violations of the Permit(s), Frasure shall be assessed a Civil Administrative Penalty of \$125,000 (one hundred and twenty-five thousand dollars to be paid to the Department of Environmental Protection within thirty (30) days of demand for penalty from WVDEP. The payments will be made in accordance with the Payment Schedule found in Attachment 2. The penalty amount will be deposited in the Mining and Reclamation Operations Fund. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or Federal Law.
6. **Total Payment in the amount of \$125,000 (one hundred and twenty-five thousand dollars shall be mailed to:**

**John Vernon, Assistant Deputy Director
Division of Mining and Reclamation
WV-DEP
601 57th Street SE
Charleston, WV 25304**

7. The Order for Compliance of this Order satisfies any claim WVDEP has or may have for penalties under the West Virginia Water Pollution Control Act for violations of the effluent limits for outlets which occurred January 2016 through September 2020 in relation to the specified Permits.
8. Stipulated Penalties
 - a. Beginning with the effective date of this Order, Frasure shall be liable for stipulated penalties for violations of items 2 through 6 of the Order for Compliance of this Order. These stipulated penalties shall be effective until termination of this Order. These stipulated penalties accrue as follows:
 - i. The first through the 15th day of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$1,000 per day per violation.
 - ii. The 16th through 30th days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$2,000 per day per violation.

- iii. The 31st day and all additional days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$3,000 per day per violation.
- b. For the period beginning October 2020 through the termination date of this Order, Frasure shall be liable for stipulated penalties for non-compliances for Permit(s), Outlet(s) and Parameter(s) specified in Table A in the following amounts:
 - i. \$1,000 for each violation of a daily maximum limit;
 - ii. \$3,000 for each violation of a monthly average limit;
 - iii. \$10,000 for each month for each of the Permits for which Frasure fails to submit a required discharge monitoring report for one or more outlets with limits.

OTHER PROVISIONS

1. Frasure hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Frasure agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Frasure does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Frasure other than proceedings, Administrative or Civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Frasure shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Frasure becomes aware of such a delay, notification shall be provided to the Acting Assistant Deputy Director and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Frasure intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Frasure (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Frasure of the obligation to comply with any applicable law, Permit, other order, or any other requirement otherwise applicable. Violations of the terms and

conditions of this Order may subject Frasure to additional penalties and injunctive relief in accordance with the applicable law.

5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Frasure, its successors and assigns.
7. The Permits that are included under Table A of the Order for Compliance sections of this Order shall terminate from the Order upon the verification of WVDEP that Frasure has met all requirements with the Order and is in full compliance. The Permits that are not included under Table A of the Order for Compliance sections of this Order shall terminate from the Order upon full payment of the Civil Administrative Penalty.



Company Representative, Representative Title
Frasure Creek Mining, LLC

12/22/2020

Date

Public Notice begin:

Date

Public Notice end:

Date

Harold D. Ward, Director
Division of Mining and Reclamation
Deputy Secretary
Department of Environmental Protection

Date

Attachment 1

The Permittee shall achieve compliance with the requirements of the Order in accordance with the following schedule:

a. Submit required Corrective Action Plan	Within 60 days of effective date of this Order
b. Submit a Quarterly Status Report to the Acting Assistant Deputy Director, Permit Inspector and NPDES Supervisor for each listed Permit	Within 90 days of effective date through termination of Order
c. Approval of application for permit modification to address treatment and final effluent limitations for Selenium at outlets 001 and 019	As soon as possible but no later than 180 days from the effective date of this Order

WV1019520; Outlet 002; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
5/31/2017	01045 - Iron, Total (as Fe)	MG/L	.21	1.80	757.14%			X

WV1019520; Outlet 002; DMR Exceedances - AVG. MONTHLY - 01/01/16-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Avg. Monthly	Reported Avg. Monthly	% Exceedance	Min.	Mod.	Maj.
5/31/2017	01045 - Iron, Total (as Fe)	MG/L	.12	0.12578	4.82%	X		

WV1019520 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	0	1

plus pH	0	0	0
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WV1019520 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	0	1

WV1018922; Outlet 005; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
1/31/2016	00981 - Selenium, Total Recoverable	UG/L	8.2	13.4	63.41%	X		
3/31/2016	00981 - Selenium, Total Recoverable	UG/L	8.2	10.49000	27.93%	X		
4/30/2016	00981 - Selenium, Total Recoverable	UG/L	8.2	11.11000	35.49%	X		
5/31/2016	00981 - Selenium, Total Recoverable	UG/L	8.2	10.44	27.32%	X		
7/31/2016	00981 - Selenium, Total Recoverable	UG/L	8.2	11.82	44.15%	X		
9/12/2016	00981 - Selenium, Total Recoverable	UG/L	8.2	12.3	50.00%	X		
5/31/2017	00981 - Selenium, Total Recoverable	UG/L	8.2	10.13	23.54%	X		

WV1018922; Outlet 005; DMR Exceedances - AVG. MONTHLY - 01/01/16-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Avg. Monthly	Reported Avg. Monthly	% Exceedance	Min.	Mod.	Maj.
1/31/2016	00981 - Selenium, Total Recoverable	UG/L	4.7	12.5	165.96%		X	
2/29/2016	00981 - Selenium, Total Recoverable	UG/L	4.7	4.71000	0.21%	X		
3/31/2016	00981 - Selenium, Total Recoverable	UG/L	4.7	9.97000	112.13%		X	
4/30/2016	00981 - Selenium, Total Recoverable	UG/L	4.7	9.61500	104.57%		X	
5/31/2016	00981 - Selenium, Total Recoverable	UG/L	4.7	9.375	99.47%		X	
7/31/2016	00981 - Selenium, Total Recoverable	UG/L	4.7	11.82	151.49%		X	
5/31/2017	00981 - Selenium, Total Recoverable	UG/L	4.7	6.23	32.55%	X		

WV1018922 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	9	5	0

plus pH	0	0	0
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WV1018922 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	9	5	0

WV1020625; Outlet 001; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
5/31/2017	00981 - Selenium, Total Recoverable	UG/L	8.2	21.6	163.41%		X	
6/30/2017	00981 - Selenium, Total Recoverable	UG/L	8.2	24.8	202.44%		X	
12/31/2017	00981 - Selenium, Total Recoverable	UG/L	8.2	55.57	577.68%		X	
1/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	49.70	506.10%		X	
3/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	9.98	21.71%	X		
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	9.70	18.29%	X		
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	9.75	18.90%	X		
7/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	17.2	109.76%		X	
7/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	54.5	564.63%		X	
8/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	35.3	330.49%		X	
9/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	34.50	320.73%		X	
10/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	41.58	407.07%		X	
11/28/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	24.9	203.66%		X	
11/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	39.04	376.10%		X	
12/19/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	19.4	136.59%		X	
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	17.89	118.17%		X	
7/31/2017	01105 - Aluminum, Total (as Al)	MG/L	.75	1.15	53.33%	X		
7/30/2018	01105 - Aluminum, Total (as Al)	MG/L	.75	1.44	92.00%	X		
7/30/2018	01045 - Iron, Total (as Fe)	MG/L	1.66	2.32	39.76%	X		
WV1020625; Outlet 001; DMR Exceedances - AVG. MONTHLY - 01/01/16-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Avg. Monthly	Reported Avg. Monthly	% Exceedance	Min.	Mod.	Maj.
5/31/2017	00981 - Selenium, Total Recoverable	UG/L	4.7	16.7	255.32%		X	
6/30/2017	00981 - Selenium, Total Recoverable	UG/L	4.7	23.8	406.38%			X
11/30/2017	00981 - Selenium, Total Recoverable	UG/L	4.7	4.723333333	0.50%	X		
12/31/2017	00981 - Selenium, Total Recoverable	UG/L	4.7	32.24	585.96%			X
1/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	29.01	517.23%			X
2/28/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	6.125	30.32%	X		
3/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	7.055	50.11%		X	
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	7.455	58.62%		X	
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	8.16	73.62%		X	

7/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	48.9	940.43%			X
8/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	31.7	574.47%			X
9/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	22.22	372.77%			X
10/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	33.58	614.47%			X
11/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	31.66	573.62%			X
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	16.875	259.04%		X	
7/31/2017	01045 - Iron, Total (as Fe)	MG/L	.96	1.35	40.63%	X		
7/31/2017	01105 - Aluminum, Total (as Al)	MG/L	.43	1.15	167.44%		X	

WV1020625; Outlet 019; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
10/31/2016	01045 - Iron, Total (as Fe)	MG/L	.43	0.487	13.26%	X		
3/31/2017	01045 - Iron, Total (as Fe)	MG/L	.43	1.60	272.09%		X	
1/31/2018	01045 - Iron, Total (as Fe)	MG/L	.43	0.44	2.33%	X		
6/30/2018	01045 - Iron, Total (as Fe)	MG/L	.43	0.95	120.93%		X	
5/31/2017	00981 - Selenium, Total Recoverable	UG/L	8.2	26.5	223.17%		X	
6/30/2017	00981 - Selenium, Total Recoverable	UG/L	8.2	19.5	137.80%		X	
1/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	15.03	83.29%	X		
3/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	9.04	10.24%	X		
6/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	14.53	77.20%	X		
7/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	17.8	117.07%		X	
7/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	29.86	264.15%		X	
8/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	19.3	135.37%		X	
9/26/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	19.1	132.93%		X	
9/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	19.32	135.61%		X	
10/29/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	14.69	79.15%	X		
10/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	17.71	115.98%		X	
11/28/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	24.4	197.56%		X	
11/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	33.02	302.68%		X	
12/19/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	19.7	140.24%		X	
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	28.13	243.05%		X	
6/30/2018	01105 - Aluminum, Total (as Al)	MG/L	.82	0.85	3.66%	X		
WV1020625; Outlet 019; DMR Exceedances - AVG. MONTHLY - 01/01/16-12/31/18						Degree of Non-Compliance		

Date	Parameter	Units	Permitted Avg. Monthly	Reported Avg. Monthly	% Exceedance	Min.	Mod.	Maj.
10/31/2016	01045 - Iron, Total (as Fe)	MG/L	.25	0.277	10.80%	X		
3/31/2017	01045 - Iron, Total (as Fe)	MG/L	.25	0.610	144.00%		X	
6/30/2018	01045 - Iron, Total (as Fe)	MG/L	.25	0.48	92.00%		X	
5/31/2017	00981 - Selenium, Total Recoverable	UG/L	4.7	19.7	319.15%			X
6/30/2017	00981 - Selenium, Total Recoverable	UG/L	4.7	18.0	282.98%		X	
1/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	7.43	58.09%		X	
3/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	6.395	36.06%	X		
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	5.45	15.96%	X		
6/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	8.57	82.34%		X	
7/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	25.03	432.55%			X
8/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	15.45	228.72%		X	
9/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	10.81	130.00%		X	
10/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	17.175	265.43%		X	
11/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	27.48	484.68%			X
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	14.07	199.36%		X	

WV1020625 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	19	42	11

plus pH	0	0	0
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WV1020625 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	19	42	11

WV1022300; Outlet 024; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
9/14/2018	01105 - Aluminum, Total (as Al)	MG/L	.14	1.08	671.43%			X
9/14/2018	01045 - Iron, Total (as Fe)	MG/L	.4	1.39	247.50%		X	

WV1022300; Outlet 029; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
9/14/2018	01105 - Aluminum, Total (as Al)	MG/L	.64	1.38	115.63%		X	
9/14/2018	01045 - Iron, Total (as Fe)	MG/L	2.07	2.30	11.11%	X		
10/16/2018	01105 - Aluminum, Total (as Al)	MG/L	.64	0.98	53.13%	X		

WV1022300 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	2	2	1

plus pH	0	0	0
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WV1022300 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	2	2	1

WV1022946; Outlet 001; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
6/30/2016	01045 - Iron, Total (as Fe)	MG/L	.86	2.61	203.49%		X	
9/30/2016	01045 - Iron, Total (as Fe)	MG/L	.86	2.60	202.33%		X	
5/31/2017	01045 - Iron, Total (as Fe)	MG/L	.86	1.06	23.26%	X		
6/30/2018	01045 - Iron, Total (as Fe)	MG/L	.86	1.13	31.40%	X		
6/30/2016	01105 - Aluminum, Total (as Al)	MG/L	.75	1.66	121.33%		X	
6/30/2018	01105 - Aluminum, Total (as Al)	MG/L	.75	0.92	22.67%	X		
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	33.14	304.15%		X	

WV1022946; Outlet 001; DMR Exceedances - AVG. MONTHLY - 01/01/16-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Avg. Monthly	Reported Avg. Monthly	% Exceedance	Min.	Mod.	Maj.
6/30/2016	01045 - Iron, Total (as Fe)	MG/L	.49	1.02	108.16%		X	
5/31/2017	01045 - Iron, Total (as Fe)	MG/L	.49	0.640	30.61%	X		
6/30/2018	01045 - Iron, Total (as Fe)	MG/L	.49	1.13	130.61%		X	
6/30/2016	01105 - Aluminum, Total (as Al)	MG/L	.43	0.621	44.42%		X	
6/30/2018	01105 - Aluminum, Total (as Al)	MG/L	.43	0.92	113.95%		X	
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	23.47	399.36%			X

WV1022946; Outlet 002; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
4/30/2016	01045 - Iron, Total (as Fe)	MG/L	.83	0.932	12.29%	X		
6/30/2016	01045 - Iron, Total (as Fe)	MG/L	.83	2.12	155.42%		X	
8/31/2016	01045 - Iron, Total (as Fe)	MG/L	.83	1.84	121.69%		X	
9/30/2016	01045 - Iron, Total (as Fe)	MG/L	.83	1.32	59.04%	X		
11/30/2016	01045 - Iron, Total (as Fe)	MG/L	.83	1.79	115.66%		X	
7/31/2017	01045 - Iron, Total (as Fe)	MG/L	.83	2.32	179.52%		X	
6/30/2018	01045 - Iron, Total (as Fe)	MG/L	.83	1.73	108.43%		X	
6/30/2016	01105 - Aluminum, Total (as Al)	MG/L	.75	1.64	118.67%		X	
7/31/2017	01105 - Aluminum, Total (as Al)	MG/L	.75	1.60	113.33%		X	
6/30/2018	01105 - Aluminum, Total (as Al)	MG/L	.75	1.31	74.67%	X		

WV1022946; Outlet 002; DMR Exceedances - AVG. MONTHLY - 01/01/16-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Avg. Monthly	Reported Avg. Monthly	% Exceedance	Min.	Mod.	Maj.
2/29/2016	01045 - Iron, Total (as Fe)	MG/L	.48	0.611	27.29%	X		
4/30/2016	01045 - Iron, Total (as Fe)	MG/L	.48	0.557	16.04%	X		
6/30/2016	01045 - Iron, Total (as Fe)	MG/L	.48	0.914	90.42%		X	
8/31/2016	01045 - Iron, Total (as Fe)	MG/L	.48	1.40	191.67%		X	
9/30/2016	01045 - Iron, Total (as Fe)	MG/L	.48	0.671	39.79%	X		
11/30/2016	01045 - Iron, Total (as Fe)	MG/L	.48	1.31	172.92%		X	
7/31/2017	01045 - Iron, Total (as Fe)	MG/L	.48	2.32	383.33%			X
6/30/2018	01045 - Iron, Total (as Fe)	MG/L	.48	1.73	260.42%		X	
6/30/2016	01105 - Aluminum, Total (as Al)	MG/L	.43	0.620	44.19%		X	
8/31/2016	01105 - Aluminum, Total (as Al)	MG/L	.43	0.510	18.60%	X		
7/31/2017	01105 - Aluminum, Total (as Al)	MG/L	.43	1.60	272.09%		X	
6/30/2018	01105 - Aluminum, Total (as Al)	MG/L	.43	1.31	204.65%		X	
7/31/2017	00530 - Total Suspended Solids	MG/L	35	49	40.00%	X		
6/30/2018	00530 - Total Suspended Solids	MG/L	35	39	11.43%	X		

WV1022946 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	13	22	2

plus pH	4	0	0
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WV1022946 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	17	22	2

WV1022946; Outlet 001; DMR Exceedances - pH Max - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
11/30/2016	00400 - pH	Std Units	9	9.2	26.70%	X		

WV1022946; Outlet 002; DMR Exceedances - pH Max - 01/01/16-12/31/18						Degree of Non-Compliance		
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Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
9/30/2016	00400 - pH	Std Units	9	9.1	13.3%	X		
10/31/2016	00400 - pH	Std Units	9	9.1	13.3%	X		
11/30/2016	00400 - pH	Std Units	9	9.2	26.70%	X		

WV1022997; Outlet 002; DMR Exceedances - AVG. MONTHLY - 01/01/16-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Avg. Monthly	Reported Avg. Monthly	% Exceedance	Min.	Mod.	Maj.
2/28/2018	01105 - Aluminum, Total (as Al)	MG/L	.43	0.44	2.33%	X		

WV1022997 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	0	0

plus pH	0	0	0
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WV1022997 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	0	0

WV1024400; Outlet 011; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
4/17/2018	00981 - Selenium, Total	UG/L	8.2	17.2	109.76%		X	
4/17/2018	01105 - Aluminum, Total (as Al)	MG/L	.14	1.78	1171.43%			X
5/17/2018	00981 - Selenium, Total	UG/L	8.2	21.9	167.07%		X	

WV1024400; Outlet 014; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
4/17/2018	00981 - Selenium, Total	MG/L	8.2	9	9.76%	X		

WV1024400; Outlet 016; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max. Daily	Reported Max. Daily	% Exceedance	Min.	Mod.	Maj.
4/17/2018	01105 - Aluminum, Total (as Al)	MG/L	.14	6.92	4842.86%			X

WV1024400 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	2	2

plus pH	0	0	0
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WV1024400 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	2	2

ALL non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	46	73	17

plus pH	4	0	0
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ALL Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	50	73	17

ATTACHMENT 2-B

Exceedances from 01/01/19 to 06/30/20

RESPONSIBLE PARTY	PERMOT	OUTLET	DATE	PARAMETER	REPORT AVG	REPORT MAX	LIMIT AVG	LIMIT MAX	UNITS	NON-COMPLIANCE	% Exceedance	Degree of non-compliance		
												MIN	MOD	MAJ
FRASURE CREEK MINING, LLC	WV1019520	001	4/30/2019 0:00	01045 - Iron, Total (as Fe)		0.25		21	MG/L	010 - Exceeds Concentration Maximum		19%	X	
FRASURE CREEK MINING, LLC	WV1020625	001	1/31/2019 0:00	00981 - Selenium, Total Recoverable		25.20		8.2	UG/L	010 - Exceeds Concentration Maximum		207%		X
FRASURE CREEK MINING, LLC	WV1020625	001	2/28/2019 0:00	00981 - Selenium, Total Recoverable		17.04		8.2	UG/L	010 - Exceeds Concentration Maximum		108%		X
FRASURE CREEK MINING, LLC	WV1020625	001	3/31/2019 0:00	00981 - Selenium, Total Recoverable		34.96		8.2	UG/L	010 - Exceeds Concentration Maximum		326%		X
FRASURE CREEK MINING, LLC	WV1020625	001	5/31/2019 0:00	00981 - Selenium, Total Recoverable		23.24		8.2	UG/L	010 - Exceeds Concentration Maximum		183%		X
FRASURE CREEK MINING, LLC	WV1020625	001	6/30/2019 0:00	00981 - Selenium, Total Recoverable		26.07		8.2	UG/L	010 - Exceeds Concentration Maximum		218%		X
FRASURE CREEK MINING, LLC	WV1020625	001	7/31/2019 0:00	00981 - Selenium, Total Recoverable		25.82		8.2	UG/L	010 - Exceeds Concentration Maximum		215%		X
FRASURE CREEK MINING, LLC	WV1020625	001	8/31/2019 0:00	00981 - Selenium, Total Recoverable		32.44		8.2	UG/L	010 - Exceeds Concentration Maximum		296%		X
FRASURE CREEK MINING, LLC	WV1020625	001	9/30/2019 0:00	00981 - Selenium, Total Recoverable		35.03		8.2	UG/L	010 - Exceeds Concentration Maximum		327%		X
FRASURE CREEK MINING, LLC	WV1020625	001	1/31/2019 0:00	00981 - Selenium, Total Recoverable	20.67		4.7		UG/L	030 - Exceeds Concentration Average		340%		X
FRASURE CREEK MINING, LLC	WV1020625	001	2/28/2019 0:00	00981 - Selenium, Total Recoverable	10.87		4.7		UG/L	030 - Exceeds Concentration Average		131%		X
FRASURE CREEK MINING, LLC	WV1020625	001	3/31/2019 0:00	00981 - Selenium, Total Recoverable	34.16		4.7		UG/L	030 - Exceeds Concentration Average		627%		X
FRASURE CREEK MINING, LLC	WV1020625	001	5/31/2019 0:00	00981 - Selenium, Total Recoverable	17.93		4.7		UG/L	030 - Exceeds Concentration Average		281%		X
FRASURE CREEK MINING, LLC	WV1020625	001	6/30/2019 0:00	00981 - Selenium, Total Recoverable	22.32		4.7		UG/L	030 - Exceeds Concentration Average		375%		X
FRASURE CREEK MINING, LLC	WV1020625	001	7/31/2019 0:00	00981 - Selenium, Total Recoverable	23.64		4.7		UG/L	030 - Exceeds Concentration Average		403%		X
FRASURE CREEK MINING, LLC	WV1020625	001	8/31/2019 0:00	00981 - Selenium, Total Recoverable	27.29		4.7		UG/L	030 - Exceeds Concentration Average		481%		X
FRASURE CREEK MINING, LLC	WV1020625	001	9/30/2019 0:00	00981 - Selenium, Total Recoverable	35.03		4.7		UG/L	030 - Exceeds Concentration Average		645%		X
FRASURE CREEK MINING, LLC	WV1020625	019	1/31/2019 0:00	00981 - Selenium, Total Recoverable		19.91		8.2	UG/L	010 - Exceeds Concentration Maximum		143%		X
FRASURE CREEK MINING, LLC	WV1020625	019	2/28/2019 0:00	00981 - Selenium, Total Recoverable		19.25		8.2	UG/L	010 - Exceeds Concentration Maximum		135%		X
FRASURE CREEK MINING, LLC	WV1020625	019	3/31/2019 0:00	00981 - Selenium, Total Recoverable		25.96		8.2	UG/L	010 - Exceeds Concentration Maximum		217%		X
FRASURE CREEK MINING, LLC	WV1020625	019	5/31/2019 0:00	00981 - Selenium, Total Recoverable		19		8.2	UG/L	010 - Exceeds Concentration Maximum		132%		X
FRASURE CREEK MINING, LLC	WV1020625	019	6/30/2019 0:00	00981 - Selenium, Total Recoverable		19.60		8.2	UG/L	010 - Exceeds Concentration Maximum		139%		X
FRASURE CREEK MINING, LLC	WV1020625	019	7/31/2019 0:00	00981 - Selenium, Total Recoverable		19.89		8.2	UG/L	010 - Exceeds Concentration Maximum		143%		X
FRASURE CREEK MINING, LLC	WV1020625	019	8/31/2019 0:00	00981 - Selenium, Total Recoverable		23.94		8.2	UG/L	010 - Exceeds Concentration Maximum		192%		X
FRASURE CREEK MINING, LLC	WV1020625	019	9/30/2019 0:00	00981 - Selenium, Total Recoverable		30.69		8.2	UG/L	010 - Exceeds Concentration Maximum		274%		X
FRASURE CREEK MINING, LLC	WV1020625	019	1/31/2019 0:00	00981 - Selenium, Total Recoverable		10.91		4.7	UG/L	030 - Exceeds Concentration Average		132%		X
FRASURE CREEK MINING, LLC	WV1020625	019	2/28/2019 0:00	00981 - Selenium, Total Recoverable		18.67		4.7	UG/L	030 - Exceeds Concentration Average		297%		X
FRASURE CREEK MINING, LLC	WV1020625	019	3/31/2019 0:00	00981 - Selenium, Total Recoverable		25.325		4.7	UG/L	030 - Exceeds Concentration Average		439%		X
FRASURE CREEK MINING, LLC	WV1020625	019	5/31/2019 0:00	00981 - Selenium, Total Recoverable		17.33		4.7	UG/L	030 - Exceeds Concentration Average		269%		X
FRASURE CREEK MINING, LLC	WV1020625	019	6/30/2019 0:00	00981 - Selenium, Total Recoverable		18.25		4.7	UG/L	030 - Exceeds Concentration Average		288%		X
FRASURE CREEK MINING, LLC	WV1020625	019	7/31/2019 0:00	00981 - Selenium, Total Recoverable		19.61		4.7	UG/L	030 - Exceeds Concentration Average		317%		X
FRASURE CREEK MINING, LLC	WV1020625	019	8/31/2019 0:00	00981 - Selenium, Total Recoverable		11.97		4.7	UG/L	030 - Exceeds Concentration Average		155%		X
FRASURE CREEK MINING, LLC	WV1020625	019	9/30/2019 0:00	00981 - Selenium, Total Recoverable		28.525		4.7	UG/L	030 - Exceeds Concentration Average		507%		X
FRASURE CREEK MINING, LLC	WV1021931	005	8/31/2019 0:00	00981 - Selenium, Total Recoverable			9.499	8.2	UG/L	010 - Exceeds Concentration Maximum		16%	X	
FRASURE CREEK MINING, LLC	WV1021931	005	8/31/2019 0:00	00981 - Selenium, Total Recoverable	5.4655		4.7		UG/L	030 - Exceeds Concentration Average		16%	X	
FRASURE CREEK MINING, LLC	WV1021931	005	8/31/2019 0:00	01105 - Aluminum, Total (as Al)	0.082		.08		MG/L	030 - Exceeds Concentration Average		3%	X	
FRASURE CREEK MINING, LLC	WV1022946	001	1/31/2019 0:00	00981 - Selenium, Total Recoverable		18.10		8.2	UG/L	010 - Exceeds Concentration Maximum		121%		X
FRASURE CREEK MINING, LLC	WV1022946	001	2/28/2019 0:00	00981 - Selenium, Total Recoverable		24.98		8.2	UG/L	010 - Exceeds Concentration Maximum		205%		X
FRASURE CREEK MINING, LLC	WV1022946	001	3/31/2019 0:00	00981 - Selenium, Total Recoverable		45.21		8.2	UG/L	010 - Exceeds Concentration Maximum		451%		X
FRASURE CREEK MINING, LLC	WV1022946	001	5/31/2019 0:00	00981 - Selenium, Total Recoverable		27.71		8.2	UG/L	010 - Exceeds Concentration Maximum		238%		X
FRASURE CREEK MINING, LLC	WV1022946	001	6/30/2019 0:00	00981 - Selenium, Total Recoverable		20.02		8.2	UG/L	010 - Exceeds Concentration Maximum		144%		X
FRASURE CREEK MINING, LLC	WV1022946	001	7/31/2019 0:00	00981 - Selenium, Total Recoverable		21.70		8.2	UG/L	010 - Exceeds Concentration Maximum		165%		X
FRASURE CREEK MINING, LLC	WV1022946	001	1/31/2019 0:00	00981 - Selenium, Total Recoverable	15.32		4.7		UG/L	030 - Exceeds Concentration Average		226%		X
FRASURE CREEK MINING, LLC	WV1022946	001	2/28/2019 0:00	00981 - Selenium, Total Recoverable	24.96		4.7		UG/L	030 - Exceeds Concentration Average		431%		X
FRASURE CREEK MINING, LLC	WV1022946	001	3/31/2019 0:00	00981 - Selenium, Total Recoverable	44.34		4.7		UG/L	030 - Exceeds Concentration Average		843%		X
FRASURE CREEK MINING, LLC	WV1022946	001	5/31/2019 0:00	00981 - Selenium, Total Recoverable	21.93		4.7		UG/L	030 - Exceeds Concentration Average		367%		X
FRASURE CREEK MINING, LLC	WV1022946	001	6/30/2019 0:00	00981 - Selenium, Total Recoverable	19.72		4.7		UG/L	030 - Exceeds Concentration Average		320%		X
FRASURE CREEK MINING, LLC	WV1022946	001	7/31/2019 0:00	00981 - Selenium, Total Recoverable	21.70		4.7		UG/L	030 - Exceeds Concentration Average		362%		X

Trout (Iron)

Non-Trout Totals	1	30	14
Trout (Iron) Totals	3	0	0
ALL TOTALS	4	30	14

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Frasure Creek Mining, LLC **WVNPDES No.:**

WV1019520, WV1018922,
WV1024400, WV1020625,
WV1022946, WV1022300,
WV1022997, WV1026755,
WV1021931, WV1023811,
WV1024736

Treatment System Design Maximum Flow: N/A **MGD**

Treatment System Actual Average Flow: N/A **MGD** (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#												
			No T	No T	No T	T	T	T	T AI	T AI	T AI	TI	TI	TI	
a)	Amount of Pollutant Released	1 to 3	1	1	2	1	1	2	1	1	2	1	1	2	
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	3	3	3	1	1	1	
c)	Sensitivity of the Environment	0 to 3	1	1	1	3	3	3	3	3	3	2	2	2	
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1	
Average Potential for Harm Factor			1	1	1.2	1.4	1.4	1.6	1.8	1.8	2	1.2	1.2	1.4	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	2	3	1	2	3	1	2	3	1	2	3	

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly , >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
No T	Minor	Minor	\$1,000	47	\$47,000
No T	Minor	Moderate	\$1,500	100	\$150,000
No T	Moderate	Major	\$4,200	27	\$113,400
T	Moderate	Minor	\$2,400		\$0
T	Moderate	Moderate	\$3,400		\$0
T	Moderate	Major	\$4,600		\$0
T AI	Moderate	Minor	\$2,800		\$0
T AI	Moderate	Moderate	\$3,800		\$0
T AI	Moderate	Major	\$5,000		\$0
T I	Moderate	Minor	\$2,200	3	\$6,600
T I	Moderate	Moderate	\$3,200	1	\$3,200
T I	Moderate	Major	\$4,400	1	\$4,400
0	FALSE	FALSE	FALSE		\$0
TIAL	Moderate	Minor	\$2,600		\$0
TIAL	Moderate	Moderate	\$3,600		\$0
TIAL	Moderate	Major	\$4,800		\$0
0	FALSE	FALSE	FALSE	1	\$0
FTS	Major	Major	\$10,000	44	\$440,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$764,600

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

- 6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase
- 6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum
- 6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)
- 6.2.b.7 - Public Interest (increase to be determined)
- 6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)
- 6.2.b.9 - Staff investigative costs (increase to be determined)
- 6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

- Public Notice Costs (cost for newspaper advertisement)
- 6.2.b.2 - Good Faith - 10% decrease to 10% increase
- 6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease
- 6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	20		\$152,920
6.2.b.4 - Compliance/noncompliance history -	20		\$152,920
6.2.b.6 - Economic benefits - (flat monetary increase)	\$81,000		\$81,000
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		Decrease to \$125,000 per WV Code 22-11- 22(a)(b)(1)	\$1,026,500
Public Notice Costs (flat monetary increase)	\$60		\$60
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$639,600)
Penalty =			\$125,000

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$69,000
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	\$12,000
Estimated Economic Benefit	\$81,000
Comments: *Failure to Submit @\$500/outlet/sampling frequency x 138 = \$69,000 *Competitive Advantage @ \$1,000/quarter x 12 quarters = \$12,000	