CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12

TO:  MarkWest Liberty Midstream & Resources, L.L.C.   DATE:  August 3, 2015
ATTN:  C. Corwin Bromley  ORDER NO.:  8050
4600 J. Barry Court, Suite 500
Cannonsburg, PA 15317

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter “Director”), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq., and Chapter 22, Article 12, Section 1 et seq. to MarkWest Liberty Midstream & Resources, L.L.C. (hereinafter “MarkWest”).

FINDINGS OF FACT

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

1. MarkWest is a natural gas gathering and processing company offering midstream services to a variety of customers. MarkWest maintains the following permits issued by the West Virginia Department of Environmental Protection (“WVDEP”) related to the construction activities referenced in this Order:

   a. On December 9, 2011, MarkWest was issued WV/NPDES No. WV0115924, Registration No. WVR105854, to cover land disturbance activities at the Mobley Gas Plant facility.

   b. On December 18, 2013, MarkWest was issued WV Water Pollution Control (WPC) Permit No. WV0116815, Registration No. WVR310135, to cover land disturbance activities related to the Sherwood Sales Line Project.
c. On April 4, 2014, MarkWest was issued WV WPC Permit No. WV0116815, Registration No. WVR310187, to cover land disturbance activities related to the Mobley to Majorsville Pipeline Project.

d. On December 26, 2013, MarkWest was issued WV WPC Permit No. WV0116815, Registration No. WVR310066, to cover land disturbance activities related to the Rocky Run pipeline break (Mobley to Fort Beeler pipeline was pre-state-permit).

e. On February 12, 2014, MarkWest was issued WV WPC Permit No. WV0116815, Registration No. WVR310069, to cover land disturbance activities related to the Majorsville to Hopedale Pipeline project.

f. On March 28, 2014, MarkWest was issued WV WPC Permit No. WV0116815, Registration No. WVR310188, to cover land disturbance activities related to the Sherwood to Mobley NGL Pipelines project.

2. On May 29, 2013, WVDEP personnel conducted an inspection of the Mobley Gas Plant facility. During the inspection, a violation of the following section of MarkWest’s permit and WV Legislative Rules was observed and documented:

a. Section B and 47CSR10 Section 5.1 - MarkWest failed to comply with the terms and conditions of its WV/NPDES permit. Specifically, MarkWest failed to comply with the approved Storm Water Pollution Prevention Plan (SWPPP). Conveyance measures on the North Access Road leading to the sediment treatment structure at the base of the access road had not been installed, and water was not leaving the site through an approved treatment device.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W-NW-JGT-052913-001 was issued to MarkWest.

3. On June 20, 2013, WVDEP personnel conducted a site visit of the Sherwood to Mobley Pipeline construction activity. During the site visit, violations of the following sections of WV Legislative Rules were observed and documented:

a. 47CSR2 Section 3.2.a - MarkWest caused conditions not allowable in State Waters. Specifically, MarkWest failed to provide sufficient protection to prevent a distinctly visible brown plume and settleable solids in Arches Fork. The violation resulted from heavy vehicular traffic associated with pipeline construction traversing an unimproved county road and associated stream ford crossings.

b. 47CSR2 Section 3.2.a - MarkWest caused conditions not allowable in State Waters. Specifically, MarkWest failed to provide sufficient protection to prevent settleable solids in an Unnamed Tributary (UT) of Arches Fork. The violations resulted from heavy vehicular traffic associated with pipeline construction traversing an unimproved county road and associated stream ford crossings.

As a result of the aforementioned violations, NOV Nos. W-NW-JGT-062013-002 and W-NW-JGT-062013-003 were issued to MarkWest.

4. On August 15, 2013, WVDEP personnel responded to a spill report of a compromised pipeline on the MarkWest Mobley to Fort Beeler Pipeline which caused a fish kill in Rocky Run. During the spill investigation, WVDEP personnel were unable to determine
water quality violations due to an unsafe working environment. MarkWest’s safety personnel declared the zone unsafe to enter based on elevated lower explosive levels (LELs) and depleted oxygen levels. MarkWest personnel confirmed that several dead fish were observed downstream in Rocky Run on August 12, 2013.

5. On August 21, 2013, WVDEP personnel conducted a surface water sampling event of the MarkWest Mobley to Fort Beeler Pipeline break site. During the visit, samples were collected downstream with the following results: Arsenic – Non-Detect; DRO – Non-Detect; ORO – Non-Detect; GRO – Non-Detect; Benzene – 10.1 µg/L; Toluene – 11.9 µg/L; Ethylbenzene – ND; m,p - Xylene – 6.68 µg/L; and o - Xylene – 1.92 µg/L. During the site visit, a violation of the following section of WV Legislative Rules was observed and documented:

a. 47CSR2 Section 3.2.e - MarkWest caused conditions not allowable in State Waters by creating materials in concentrations which were harmful, hazardous, or toxic to man, animal, or aquatic life. Specifically, sample results revealed elevated volatile organic compounds present in Rocky Run.

6. On September 4, 2013, WVDEP personnel conducted a site visit of the Sherwood to Mobley Pipeline construction activity. During the site visit, violations of the following sections of WV Legislative Rules were observed and documented:

a. 47CSR11 Section 2.2.a - MarkWest failed to provide immediate notification to the Office of Water Resources of a discharge of pollutants into waters of the State. Specifically, MarkWest failed to notify WVDEP of a slip which impacted State Waters in Arches Fork.

b. 47CSR11 Section 2.2.a - MarkWest failed to provide immediate notification to the Office of Water Resources of a discharge of pollutants into waters of the State. Specifically, MarkWest failed to notify WVDEP of a slip which impacted State Waters in a UT of Arches Fork, approximately 2000' upstream of its confluence with Arches Fork.

c. 47CSR2 Section 3.2.a - MarkWest caused conditions not allowable in State Waters. Specifically, MarkWest failed to provide sufficient protection to prevent settleable solids in a UT of Arches Fork, approximately 2000' upstream of its confluence with Arches Fork.

As a result of the aforementioned violations, NOV Nos. W-NW-JGT-090413-001, W-NW-JGT-090413-002, and W-NW-JGT-090413-003 were issued to MarkWest.

7. On September 19, 2013, WVDEP personnel conducted a surface water sampling event of the MarkWest Mobley to Fort Beeler Pipeline break site. One upstream sample and two downstream samples were collected. One downstream sample revealed the following results: Benzene – 78.9 µg/L; Toluene – 7.77 µg/L; Ethylbenzene – 2.33 µg/L; m,p - Xylene – 15.9 µg/L; and o - Xylene – 7.56 µg/L. During the site visit, a violation of the following section of WV Legislative Rules was observed and documented:

a. 47CSR2 Section 3.2.e - MarkWest caused conditions not allowable in State Waters by creating materials in concentrations which were harmful, hazardous, or
toxic to man, animal, or aquatic life. Specifically, sample results revealed elevated volatile organic compounds present in Rocky Run.

8. On October 3, 2013, WVDEP personnel conducted a surface water sampling event of the MarkWest Mobley to Fort Beeler Pipeline break site. One upstream sample and two downstream samples were collected. One downstream sample revealed the following results: Benzene – 48.0 µg/L; Toluene – 8.54 µg/L; Ethylbenzene – 2.55 µg/L; m,p - Xylene – 21.2 µg/L; and o - Xylene – 7.64 µg/L. During the site visit, a violation of the following section of WV Legislative Rules was observed and documented:

   a. 47CSR2 Section 3.2.e - MarkWest caused conditions not allowable in State Waters by creating materials in concentrations which were harmful, hazardous, or toxic to man, animal, or aquatic life. Specifically, sample results revealed elevated volatile organic compounds present in Rocky Run.

9. On October 15, 2013, WVDEP personnel conducted an inspection of the Majorsville to Hopedale Pipeline Project. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

   a. 47CSR2 Section 3.2.b - MarkWest caused conditions not allowable by creating deposits in State Waters. Specifically, material and debris slipped from the MarkWest ROW and partially blocked a UT of Turkey Run.
   b. 47CSR2 Section 3.2.b - MarkWest caused conditions not allowable in State Waters. Specifically, drilling mud from an inadvertent return during horizontal directional drilling (HDD) operations entered into a UT of Coulter Run, leaving deposits in the stream for approximately 230 feet.

As a result of the aforementioned violations, NOV Nos. W-NW-TAM-101513-001 and W-NW-TAM-101513-002 were issued to MarkWest.

10. On October 21, 2013, WVDEP personnel responded to a report of an inadvertent return on Little Wheeling Creek in Ohio County on the Majorsville to Hopedale Pipeline Project. During the site visit, a violation of the following section of WV Legislative Rules was observed and documented:

   a. 47CSR2 Section 3.2.b - MarkWest caused conditions not allowable in State Waters. Specifically, drilling mud from a HDD operation surfaced on the access road near Little Wheeling Creek. An unknown amount of drilling mud overtopped controls and entered into Little Wheeling Creek. A sludge blanket of drilling mud was observed in Little Wheeling Creek for approximately 160 feet downstream of the operation.

11. On October 22, 2013, WVDEP personnel responded to a report of an inadvertent return in Little Wheeling Creek in Ohio County on the Majorsville to Hopedale Pipeline Project. During the site visit, violations of the following sections of WV Legislative Rules were observed and documented:

   a. 47CSR2 Section 3.2.a - MarkWest caused conditions not allowable by creating deposits in State Waters. Specifically, drilling mud from a HDD operation surfaced in
Little Wheeling Creek approximately 200 feet upstream of the October 21, 2013 incident.

12. On October 24, 2013, WVDEP personnel conducted a site visit at the inadvertent return area of Little Wheeling Creek on the Majorsville to Hopedale Pipeline Project. During the site visit, violations of the following sections of WV Legislative Rules were observed and documented:

a. 47CSR2 Section 3.2.a - MarkWest caused conditions not allowable in State Waters. Specifically, approximately 200 feet of Little Wheeling Creek continued to be impacted by settleable solids from drilling mud and thirty (30) dead fish, minnows and darters as well as two (2) dead crayfish were documented.

As a result of the aforementioned violations, NOV No. W-NW-JGT-102413-001 was issued to MarkWest.

13. On October 31, 2013, WVDEP personnel conducted a site visit at the inadvertent return area of Little Wheeling Creek on the Majorsville to Hopedale Pipeline Project. During the site visit, inspection of a nearby manhole owned by Ohio County PSD showed evidence that a significant amount of drilling mud had impacted the collection system for 1.7 miles. During the site visit, a violation of the following section of WV Legislative Rules was observed and documented:

a. 47CSR2 Section 3.2.b - MarkWest caused conditions not allowable in State Waters. Specifically, approximately 200 feet of Little Wheeling Creek continued to be impacted by a sludge blanket of drilling mud.

14. On November 15, 2013, WVDEP personnel conducted an inspection of a slip which occurred on the ROW at or near 40° 03.920'N, 80° 31.961'W on the Majorsville to Hopedale Pipeline Project. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:

a. 47CSR2 Section 3.2.b - MarkWest caused conditions not allowable by creating deposits in State Waters. Specifically, material slipped from the MarkWest ROW and entered into a UT of Todd Run, blocking the flow.

As a result of the aforementioned violation, NOV No. W-NW-TAM-111513-001 was issued to MarkWest.

15. On May 20, 2014, WVDEP personnel and representatives of MarkWest met to discuss the terms and conditions of the Order.

16. On August 25, 2014, WVDEP personnel conducted an inspection of the Mobley to Majorsville Pipeline Project. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:
a. 47CSR2 Section 3.2.b – MarkWest caused conditions not allowable by creating sediment deposits in waters of the State. Specifically, slip material and debris originating from the pipeline ROW left sediment deposits in Wheeling Creek.
b. 47CSR11 Section 2.2.a – MarkWest failed to provide immediate notification to the Office of Water Resources of a discharge of pollutants into waters of the State. Specifically, slip material and debris originating from the pipeline ROW entered into Wheeling Creek on August 20, 2014 and had not been reported at the time of inspection.

As a result of the aforementioned violations, NOV Nos. W-NW-TAM-082514-001 and W-NW-TAM-082514-002 were issued to MarkWest.

17. On October 20, 2014, WVDEP personnel conducted a flight inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:

a. 47CSR2 Section 3.2.a-MarkWest created conditions not allowable in waters of the State. Specifically, a distinctly visible plume of suspended solids left a MarkWest ROW and entered into Wheeling Creek.

As a result of the aforementioned violation, NOV No. W-NW-TAM-102014-001 was issued to MarkWest.

18. On November 6, 2014, WVDEP personnel conducted an inspection of the Sherwood Sales Line Project. During the inspection, a violation of the following section of the terms and conditions of MarkWest’s permit was observed and documented:

a. G.4.c-MarkWest failed to modify its SWPPP when there was a change in design, construction, scope of operation, or maintenance, which had a significant effect on the potential for the discharge of pollutants in storm water discharges. Specifically, the SWPPP was not modified to account for earthen slip repair activities on the permitted project.

As a result of the aforementioned violation, NOV No. W-NW-JGT-110614-001 was issued to MarkWest.

19. On December 3, 2014, WVDEP personnel and representatives of MarkWest met to discuss the terms and conditions of the Order.

20. On January 22, 2015, WVDEP personnel conducted a fly over inspection of the Sherwood Sales Line project (Permit No. WVR310135). During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

a. 47CSR10 Section 5.5-MarkWest failed to properly operate and maintain the facility. Specifically, MarkWest failed to maintain several areas of super silt fence.
b. 47CSR2 Section 3.2.a-MarkWest caused conditions not allowable in waters of the State. Specifically, sediment laden water left MarkWest’s right of way and entered into a UT of Buckeye Creek, causing a visible plume of suspended solids downstream.

As a result of the aforementioned violations, NOV Nos. W-NW-TAM-012215-002 and W-NW-TAM-012215-003 were issued to MarkWest.

21. On January 22, 2015, WVDEP personnel conducted a fly over inspection of the Mobley to Majorsville Pipeline project (Permit No. WVR310187). During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

   a. 47CSR2 Section 3.2.b-MarkWest caused conditions not allowable in waters of the State. Specifically, sediment deposits originating from MarkWest’s right of way were present in Straight Run.
   b. 47CSR10 Section 5.5-MarkWest failed to properly operate and maintain the facility. Specifically, a significant amount of waterbars were damaged and not repaired, ingress/egress to the site was not properly maintained, and several areas of silt fence/super silt fence were compromised and not repaired.
   c. 47CSR10 Section 5.1-MarkWest failed to comply with its approved permit. Specifically, several Best Management Practices (BMPs) were not installed, were not installed as detailed, or were replaced with unapproved BMPs. Hay bales were used in several areas in place of silt fence or super silt fence, silt fence was used in areas requiring reinforced silt fence, and some areas did not have any of the required controls in place.

As a result of the aforementioned violations, NOV Nos. W-NW-TAM-012215-011, W-NW-TAM-012215-013, and W-NW-TAM-012215-014 were issued to MarkWest.

22. On February 11, 2015, WVDEP personnel responded to a complaint regarding Middle Wheeling Creek being milky white. Upon investigation, violations of the following sections of WV Legislative Rules were observed and documented:

   a. 47CSR2 Section 3.2.a.-MarkWest caused conditions not allowable in waters of the State. Specifically, pollutants originating from a MarkWest right of way where a well was being drilled for cathodic protection entered into Middle Wheeling Creek, causing a plume of suspended solids for more than a mile and a half downstream.
   b. 47CSR11 Section 2.2.a.-MarkWest failed to immediately report a spill or accidental discharge of pollutants into waters of the State. Specifically, pollutants originating from a MarkWest cathodic well drilling site entered into Middle Wheeling creek, causing a plume of suspended solids. The release was not reported until February 12, 2015. WVDEP personnel contacted MarkWest representatives prior to the report being made, and MarkWest representatives stated they were aware of the incident.
As a result of the aforementioned violations, NOV Nos. W-NW-TAM-0211015-001 and W-NW-TAM-0211015-002 were issued to MarkWest.

23. On April 13, 2015, WVDEP personnel responded to a self-reported Spill Report of an earthen slip on the Mobley to Majorsville NGL Pipelines project that impacted Wheeling Creek. During the site visit, a violation of the following section of WV Legislative Rules was observed and documented:

   a. 47CSR2 Section 3.2.a-MarkWest created conditions not allowable in waters of the State. Specifically, sediment associated with pipeline construction at or near GPS coordinates 39° 56.9972' N, 80° 31.9164' W caused settleable solids in Wheeling Creek.

As a result of the aforementioned violation, NOV No. W-NW-JGT-041315-001 was issued to MarkWest.

24. On April 15, 2015, WVDEP personnel responded to a self-reported Spill Report of an earthen slip on the Mobley to Majorsville NGL Pipelines project that impacted a UT of Willey Fork. During the site visit, violations of the following sections of WV Legislative Rules and MarkWest’s WV/NPDES permit were observed and documented:

   a. 47CSR2 Section 3.2.a-MarkWest caused conditions not allowable in waters of the State. Specifically, sediment associated with pipeline construction at or near GPS coordinates 39° 34.7669' N, 80° 33.6298' W caused settleable solids in a UT of Willey Fork.
   b. Section D.1.-MarkWest failed to properly operate and maintain the site. Specifically, multiple erosion and sediment controls were unmaintained and non-functional.

As a result of the aforementioned WV Legislative Rule violations, NOV Nos. W-NW-JGT-041515-001 and W-NW-JGT-041515-002 were issued to MarkWest. As a result of the aforementioned WV/NPDES permit violation, a warning was issued to MarkWest.

25. On April 16, 2015 WVDEP personnel and representatives of MarkWest met to discuss the terms and conditions of the Order. During the meeting, MarkWest represented that it maintains geo-referenced line work and placemark data for all projects which are required to obtain a Water Pollution Control Stormwater Permit Associated with Oil and Gas Construction Activities. WVDEP and MarkWest agreed to discuss opportunities and methods for sharing this data with WVDEP inspection staff.

26. On April 20, 2015, WVDEP personnel responded to a self-reported Spill Report of an earthen slip on the Mobley to Majorsville NGL Pipelines project. The Spill Report stated that slip material had entered North Fork Fishing Creek. During the site visit, the following observations were documented:

   a. The slip area had a width of approximately ten (10) to fifteen (15) feet, originated from approximately sixty (60) feet above the waterline, and passed through recently-installed super silt fence.
b. Matting at the waterline was disturbed by high water flow and had not yet been repaired and/or replaced to provide stabilization on the stream bank of North Fork Fishing Creek.

c. Due to turbidity and high water flow, it was not possible to document water quality violations.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq., and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. MarkWest shall immediately take all measures to initiate compliance with all pertinent laws, rules and permit requirements.

2. Within twenty (20) days of the effective date of this Order, MarkWest shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when MarkWest will achieve compliance with laws and rules pertinent to this order, which have not previously been submitted to the WVDEP.

   a. Provisions for properly capping the abandoned drinking water well located at 9385 National Rd., Valley Grove, West Virginia.

   b. A remediation plan for all areas of the aforementioned Ohio County PSD collection system impacted by the inadvertent return of drilling mud from MarkWest’s HDD operations.

The plan of corrective action shall make reference to Order No. 8050. The plan of corrective action shall be submitted to:

WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554

A copy of this plan shall be submitted to:

Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.
3. Upon the effective date of this Order, MarkWest shall begin submitting a monthly inventory of all slips that are impacting or have the imminent potential to impact waters of the State. As Mark West currently maintains a comprehensive system-wide slip inventory, this submittal will encompass only a subset of the slips that Mark West is tracking. Slip inventory shall be submitted on or before the first Monday of the following month for a period of eighteen (18) months following the effective date of this Order. The inventory shall include slip priority level, GPS coordinates, and an estimated remediation timeline. Slip inventory shall be prioritized in accordance with the attached guidance document. The slip inventory shall be submitted to:

   WVDEP Environmental Inspector Supervisor  
   NW Regional Environmental Enforcement Office  
   2031 Pleasant Valley Road  
   Fairmont, WV 26554

4. Because of MarkWest's Legislative Rule violations, MarkWest shall be assessed a civil administrative penalty of seventy-six thousand four hundred five dollars ($76,405) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. Payment shall include a reference to the Order No. and shall be mailed to:

   Chief Inspector  
   Environmental Enforcement - Mail Code #031328  
   WV-DEP  
   601 57th Street SE  
   Charleston, WV 25304
OTHER PROVISIONS

1. MarkWest hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21, and/or Chapter 22, Article 12, Section 110 of the Code of West Virginia. Under this Order, MarkWest 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, MarkWest 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 MarkWest 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, MarkWest 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 MarkWest becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and MarkWest 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 MarkWest 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 MarkWest (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 MarkWest 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 MarkWest 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 MarkWest, its successors and assigns.
7. This Order shall terminate upon MarkWest's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

C. Corwin Bromley
MarkWest Liberty Midstream & Resources, L.L.C.

9-2-2015
Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

revised March 2013

RECEIVED
SEP 03 2015
ENVIRONMENTAL ENFORCEMENT
Slip Priority Categorization

Priority 1 Slip:
Definition: A slip which has caused an immediate danger to human health and/or the environment. This type of slip requires an emergency response.

Criteria:
- Compromises or threatens other utilities.
- Active and/or functional pipeline is broken or detached.
- A public roadway which may be used for emergency vehicles is blocked.
- A fish kill has been observed and/or confirmed in the receiving waters.
- Release of aqueous phase hydrocarbons (i.e. condensate).
- Slip has completely blocked the flow of a stream, and the resulting impoundment is large enough to constitute an immediate danger to human health and/or the environment.

If any one of these criteria exists, it is a Priority 1 Slip.

Possible actions:
- Contact West Virginia 811.
- Contact local office of emergency services.
- Contact WVDOH.
- Contact WVDNR.
- Notify WVDEP Emergency Spill Line (1-800-642-3074), pursuant to 47CSR11-2. (Special Rules) of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.
- Contact made with responsible party.
- Any other necessary contact made to outside agencies for emergency purposes, to include possible referral to USACE/USEPA.
Priority 2 Slip:
Definition: A slip, slide, or associated migration of sediment and/or a mass movement of soil which has reached a waterway causing Conditions Not Allowable in State Waters.

Criteria:
- Slip material or sediment laden water has entered waters of the state.
- A pipeline is exposed but not broken.
If any one of these criteria exists, it is a Priority 2 Slip.

Possible Actions:
- Referral to EPA.
- Referral to USACE.
- Contact made with responsible party
- Notify WVDEP Emergency Spill Line (1-800-642-3074), pursuant to 47CSR11-2. (Special Rules) of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

Priority 3 Slip:
Definition: A slip, slide or associated migration of sediment and/or debris that has not yet reached state waters.

Criteria:
- Impact to the water body is imminent.

Possible Actions:
- Notify responsible party.
- Notify WVDEP county inspector.

Priority 4 Slip:
Definition: A slip that poses little or no environmental threat.

Criteria:
- No water body in the immediate area.
- Low/no probability of Conditions Not Allowable.
- Pipeline is not in danger of exposure, severing, detaching or rupture.

Possible Actions:
- Notify responsible party.
Photo 1. Sediment treatment structure at base of North Access Road not connected to functional conveyances as outlined in SWPPP.
Photo 1: Slip area. Rocky Run located at toe of slip.

Photo 2: Most upstream area of slip material in Rocky Run.
Photo 3: Same location as photo 3, looking downstream at slip material.

Photo 4: Right side of slip area. Several foam trench breakers, trees and woody debris present.
Photo 5: Approximately mid-way of slip material looking down stream. Farthest downstream area safely accessible.

Photo 6: Rocky Run nearly blocked with slip debris.
Photo 1: Overview of slip area from left side of site.

Photo 2: Close up of photo 1 near the top of the slip. Large mass of trees and dirt on the right of photo appears to have moved onto right of way.
Photo 3: Front view of slip area.

Photo 4: Closer view of slip area from the left side of site.
Photo 5: Looking downstream from approximately midway of slip area.

Photo 6: Looking upstream from same position as photo 5.
Photo 7: Frost on ground where contaminants are leaching out of soils. Hydrocarbon product on stream surface.

Photo 8: Approximately 50' downstream of slip area looking upstream.
Photo 9: Looking downstream from same position as photo 8.

Photo 10: Looking upstream.
Photo 11: Below the under flow dam looking upstream.

Photo 12: Looking downstream from photo 11.
9/4/13 – Arches Fork Slip

Photo 1. Slip on ROW at or near GPS coordinates 39° 27' 26.89" N 80° 34' 36.59" W.

Photo 2. E&S BMPs on Arches Fork observed to have imminent failure.
9/4/13 – Arches Fork Slip

Photo 3. Slip on ROW at or near GPS coordinates 39° 27' 18.52" N 80° 34' 41.94" W.

Photo 4. Slip material entered a UT of Arches Fork.
Photo 5. Pipe exposed on ROW at or near GPS coordinates 39° 27' 16.64" N 80° 34' 41.70" W.
Photo 1: Staging area for contaminated soil on top of the hill.

Photo 2: Different view of above photo.
Photo 3: Three pumps in secondary containment for pump around.

Photo 4: Dammed off area upstream.
Photo 5: Culvert equipment crossing.

Photo 6: Contaminated soil staging area. Exposed damaged pipeline and rock face on the right of way.
Photo 7: Ditched secondary containment for contaminated soils.

Photo 8: Stream side of secondary containment for contaminated soils.
Photo 9: Holding tanks for collected gaining waters and contaminated water.

Photo 10: Warning signs downstream of site.
Photo 1: Overview of site. Contaminated soil pile in left of photo.

Photo 2: Looking upstream at impacted area.
Photo 3: In stream area of impact. Upstream side.

Photo 4: Downstream side of impacted area.
Photo 1: Timber mat bridge crossing Turkey Run. Slip material came from an area in the center, top, and right of photo.

Photo 2: Upstream of slip area. UT of Turkey Run is approximately 10-15 ft wide.
Photo 3: Taken from same location as photo 4, looking downstream at slip material.

Photo 4: Slip material in UT of Turkey Run.
Photo 5: Taken at the center of the slip area looking upstream. Stream is approximately 1 ft wide.

Photo 6: Taken from a downstream location looking upstream at the slip area. Slip material came from a stockpile placed on the side of the right of way.
Photo 1: Return pit.

Photo 2: Inadvertent return area.
Photo 3: Downhill from photo 3.

Photo 4: Stream dammed off and being pumped. Vegetation being washed.
Photo 5: Approximately 230 feet downstream of the inadvertent return. This was the farthest visible impact.
Photo 1: Overview of impacted area of Little Wheeling Creek.

Photo 2: End of pump around. Drill mud in stream on the left of photo.
Photo 3: Sludge blanket from drill mud on stream bead.

Photo 4: A large pull of stream filled with drill mud.
Photo 5: Area where inadvertent return occurred.
Below the containment area.
10/24/13 – Little Wheeling Frac-out

Photo 1. Upstream dam expanding pump-around area from previous inadvertent return.

Photo 2. Sediment associated with an inadvertent return observed in Little Wheeling Creek.
10/24/13 – Little Wheeling Frac-out

Photo 3. Previously-impacted and dewatered section of Little Wheeling Creek.

Photo 4. Fish kill observed by WVDEP personnel at time of site visit.
10/24/13 – Little Wheeling Frac-out

Photo 5. Downstream discharge from pump-around observed utilizing velocity-reducing splash board.
Photo 1: An overview of part of the impact to Little Wheeling Creek. A thick sludge blanket of drill mud was present on the stream bed.

Photo 2: Upstream area of impacted stream.
Photo 3: Sludge blanket from drill mud on stream bed.

Photo 4: Ohio County PSD manhole. Evidence of drill mud entering collection system.
Photo 1: Slip material from right of way entering into UT of Todd Run.

Photo 2: Close up of photo 1. UT of Todd Run blocked.
Photo 3: Slip material on working side of right of way that has not impacted the stream.
DSCN1516: Overview of slip area and right of way.

DSCN1517: Slip area. Slip material in Wheeling Creek.
DSCN1518: Exposed foam breaker for existing pipeline.

DSCN1520: Slip material and debris originating from right of way entering into Wheeling Creek.
IMG_6450: Conditions Not Allowable – Wheeling Creek.
IMG_6451: Another view of photo IMG_6450.
IMG_8366: Straight Run near 1488+00 (N39°51'36.34" W80°35'38.78"). A designated wetland is located in the low area.

IMG_8367: Alternative view of photo IMG_8366.
IMG_7726: Slip near station 202+00. Super silt fence damaged.

IMG_7767: Large slip near station 59+00.
IMG_7785: Sediment laden water leaving right of way and entering UT of Buckeye Creek near station 30+00. Super silt fence covered with stock pile in upper right of photo.

IMG_7786: Different position from photo IMG_7785. Super silt fence replaced with a wattle. Super silt fence on left of photo damaged.
DSCN1872: Drill rig with Bentonite slurry on the ground.

DSCN1875: Material leaving site and entering road culvert. Hay bales placed.
DSCN1882: Drainage swale leading to Middle Wheeling Creek.

DSCN1883: Material entering into Middle Wheeling Creek.
2/11/15
MarkWest Liberty Midstream & Resources LLC
Middle Wheeling Creek

DSCN1893: Plume of suspended solids more than a mile and a half downstream near
N40°02'38.82" W80°32'40.97".

DSCN1895: Laidley Run entering into Middle Wheeling Creek.
DSCN1873: Unsecured well.
Photo 1. Sediment observed leaving ROW and entering Wheeling Creek.

Photo 2. Sediment lobe observed in Wheeling Creek.
Photo 3. Sediment lobe observed in Wheeling Creek.
Photo 1. Sediment plume observed in Willey Fork at outlet of UT of Willey Fork impacted by slip.

Photo 2. Sediment and vegetative debris observed in an UT of Willey Fork.
Photo 3. Slip reported by MarkWest at or near GPS coordinates 39° 34.7669’ N 80° 33.6298’ W.

Photo 4. Sediment and vegetative debris in an UT of Willey Fork at or near GPS coordinates 39° 34.6762’ N 80° 33.6745’ W.
Photo 5. Curlex matting observed on stream banks in vicinity of slip.

Photo 6. Sediment and vegetative debris in an UT of an UT of Willey Fork.
Photo 7. Head of slip area (ROW behind compromised super silt fence) at or near GPS coordinates 39° 34.6762' N 80° 33.6745' W.

Photo 8. Head of slip area at or near GPS coordinates 39° 34.6279' N 80° 33.6739' W.
Photo 9. Head of slip area at or near GPS coordinates 39° 34.6279' N 80° 33.6739' W.
Base Penalty Calculation
(pursuant to 47CSR1-6.1)

Responsible Party: MarkWest Liberty Midstream & Resources, LLC
Receiving Stream: 

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.

<table>
<thead>
<tr>
<th>Potential for Harm Factor</th>
<th>Factor Range</th>
<th>2a, 21c</th>
<th>5a</th>
<th>6a, 6b, 16b, 22b</th>
<th>6c</th>
<th>9a, 9b, 14a, 16a, 21a</th>
<th>10a</th>
<th>17a</th>
<th>18a</th>
<th>20a, 21b</th>
<th>20b, 22a, 23a, 24a</th>
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</thead>
<tbody>
<tr>
<td>a) Amount of Pollutant Released</td>
<td>1 to 3</td>
<td>1 3 1 2 2 3</td>
<td>1 1 1 2 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>b) Toxicity of Pollutant</td>
<td>0 to 3</td>
<td>0 2 0 1 1 1</td>
<td>1 0 1 1</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>c) Sensitivity of the Environment</td>
<td>0 to 3</td>
<td>0 1 0 1 1 1</td>
<td>1 0 1 1</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d) Length of Time</td>
<td>1 to 3</td>
<td>1 2 1 1 1 2</td>
<td>1 1 1 1</td>
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<td></td>
<td></td>
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<tr>
<td>e) Actual Exposure and Effects thereon</td>
<td>0 to 3</td>
<td>0 1 0 1 1 2</td>
<td>1 0 2 1</td>
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<td></td>
<td></td>
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<tr>
<td>Average Potential for Harm Factor</td>
<td>0.4 1.8 0.4 1.2 1.2 1.8 1 1 1 1 1.4 1.4 No No No</td>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>

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.
Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

<table>
<thead>
<tr>
<th>1) Potential for Harm Factor</th>
<th>Factor Range</th>
<th>FOF#</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Amount of Pollutant Released</td>
<td>1 to 3</td>
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</tr>
<tr>
<td>b) Toxicity of Pollutant</td>
<td>0 to 3</td>
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<tr>
<td>c) Sensitivity of the Environment</td>
<td>0 to 3</td>
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</tr>
<tr>
<td>d) Length of Time</td>
<td>1 to 3</td>
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<tr>
<td>e) Actual Exposure and Effects thereon</td>
<td>0 to 3</td>
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<table>
<thead>
<tr>
<th>Average Potential for Harm Factor</th>
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<th>No</th>
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<table>
<thead>
<tr>
<th>2) Extent of Deviation Factor</th>
<th>Factor Range</th>
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<td>Degree of Non-Compliance</td>
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</tr>
<tr>
<td>FOF #</td>
<td>Potential for Harm</td>
<td>Extent of Deviation</td>
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<tr>
<td>-----------------</td>
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<tr>
<td>2a, 21c</td>
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<td>Moderate</td>
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<tr>
<td>5a</td>
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<td>Major</td>
</tr>
<tr>
<td>6a, 6b, 16b, 22b</td>
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<td>Major</td>
</tr>
<tr>
<td>6c</td>
<td>Moderate</td>
<td>Major</td>
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<tr>
<td>9a, 9b, 14a, 16a, 21a</td>
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<td>Moderate</td>
</tr>
<tr>
<td>10a</td>
<td>Moderate</td>
<td>Moderate</td>
</tr>
<tr>
<td>17a</td>
<td>Minor</td>
<td>Minor</td>
</tr>
<tr>
<td>18a</td>
<td>Minor</td>
<td>Major</td>
</tr>
<tr>
<td>20a, 21b</td>
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<td>Moderate</td>
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<tr>
<td>20b, 22a, 23a, 24a</td>
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</tbody>
</table>

Total Base Penalty: $61,100
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.

<table>
<thead>
<tr>
<th>Avg. Daily WW Discharge Flow (gpd)</th>
<th>% Reduction Factor</th>
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<tbody>
<tr>
<td>&lt; 5,000</td>
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</tr>
<tr>
<td>5,000 to 9,999</td>
<td>40</td>
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<td>10,000 to 19,999</td>
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<td>20,000 to 29,999</td>
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<tr>
<td>40,000 to 99,999</td>
<td>5</td>
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<tr>
<td>&gt; 100,000</td>
<td>0</td>
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</tbody>
</table>

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)

<table>
<thead>
<tr>
<th>Penalty Adjustment Factor</th>
<th>% Increase</th>
<th>% Decrease</th>
<th>Base Penalty Adjustments</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.2.b.1 - Willfulness and/or negligence -</td>
<td>10</td>
<td></td>
<td>$6,110</td>
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<td>6.2.b.4 - Compliance/noncompliance history -</td>
<td>25</td>
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<td>$15,275</td>
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<td>6.2.b.6 - Economic benefits - (flat monetary increase)</td>
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<td>$0</td>
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<td>6.2.b.7 - Public Interest - (flat monetary increase)</td>
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<td>6.2.b.8 - Loss of enjoyment - (flat monetary increase)</td>
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<td>6.2.b.9 - Investigative costs - (flat monetary increase)</td>
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<tr>
<td>6.2.b.10 - Other factors (size of violator)</td>
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<td>6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)</td>
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<td>$0</td>
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<td>6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)</td>
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<tr>
<td>Public Notice Costs (flat monetary increase)</td>
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<td>6.2.b.2 - Good Faith - Increase</td>
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<tr>
<td>6.2.b.2 - Good Faith - Decrease</td>
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<tr>
<td>6.2.b.3 - Cooperation with the Secretary</td>
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<td>($6,110)</td>
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<td>6.2.b.5 - Ability to Pay</td>
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**Penalty Adjustments**

$15,305

**Penalty =**

$76,405

### Estimated Economic Benefit

<table>
<thead>
<tr>
<th>Item</th>
<th>Estimated Benefit ($)</th>
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<tbody>
<tr>
<td>Monitoring &amp; Reporting</td>
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</tr>
<tr>
<td>Installation &amp; Maintenance of Pollution Control Equipment</td>
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<tr>
<td>O&amp;M expenses and cost of equipment/materials needed for compliance</td>
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<tr>
<td>Permit Application or Modification</td>
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<tr>
<td>Competitive Advantage</td>
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<tr>
<td><strong>Estimated Economic Benefit</strong></td>
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</tr>
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</table>

**Comments:**