

## PUBLIC NOTICE

The West Virginia Department of Environmental Protection (WVDEP) and Brooks Run Mining Company, 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, Brooks Run Mining Company, 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 9, 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 57<sup>th</sup> Street SE; Charleston, WV 25304; (304) 926-0499. Comments may also be submitted electronically to: [DEP.Comments@wv.gov](mailto:DEP.Comments@wv.gov). The proposed settlement may be viewed at the following address: <http://www.dep.wv.gov/pio/Pages/Settlements,Ordersouttopublicnotice.aspx>.



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west virginia department of environmental protection

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Division of Mining and Reclamation  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304-2345  
Phone: (304) 926-0490  
Fax: (304) 926-0456

Austin Caperton, Cabinet Secretary  
dep.wv.gov

November 16, 2020

Brooks Run Mining Company, LLC  
2691 Little Birch Rd.  
Sutton, WV 26601

Certified Mail

Return Receipt Requested

**ADMINISTRATIVE CIVIL PENALTY ASSESSMENT NOTICE**

Dear Permittee,

Enclosed is **Consent Order Number M-19-277** dated the 16<sup>th</sup> day of November 2020. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Division of Mining and Reclamation in response to Brooks Run Mining Company, LLC violating Chapter 22, Article 11, of the West Virginia State Code.

This Consent Order is being offered pursuant to Chapter 22, Article 11, Section 22a of the West Virginia Code and Legislative Rule, Title 47, Series 30B (47CSR30B).

Please review the terms and conditions of the Proposed Consent Order and respond within thirty (5) days of your receipt of this letter. You may accept these terms and conditions by signing and returning the Proposed Consent Order to:

John Vernon, Assistant Deputy Director  
West Virginia Department of Environmental Protection  
Division of Mining and Reclamation  
601 57<sup>th</sup> St. SE  
Charleston, WV 25304

Upon reaching agreement with the WVDEP on a resolution of the violation(s) contained in the Consent Order, the Consent Order will be subject to the Public Notice and comment requirements set forth in West Virginia Code Chapter 22-11-22a. This notice will identify the responsible party, the specific enforcement action to be taken and the Civil Administrative Penalty assessment. The WVDEP will consider all comments received during the thirty (30) day comment period and the Draft Consent Order may be subject to change. Should the settlement

be modified after the comment period, you have the option of choosing not to enter into the Consent Order.

Failure to respond to this correspondence as required shall be considered as your refusal to participate in this process.

Sincerely,

**John T Vernon**

Digitally signed by John T  
Vernon  
Date: 2020.11.16 16:39:07  
-05'00'

John Vernon  
Assistant Deputy Director



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west virginia department of environmental protection

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

Austin Caperton, Cabinet Secretary  
dep.wv.gov

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

TO: Brooks Run Mining Company, LLC  
2691 Little Birch Rd.  
Sutton, WV 26601

DATE: November 16, 2020

ORDER NO.: M-19-277

**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 Brooks Run Mining Company, LLC (hereinafter "Brooks Run").

**FINDINGS OF FACT**

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

1. Brooks Run 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 WV0050318, WV0050857, WV0060194, WV1000527, WV1010221, WV1018078, WV0050920, WV1009885, and WV1017977 ("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. Brooks Run 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").

4. 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 Brooks Run for the Permits (“the Database”). The Database has been used by the WVDEP to track compliance with WVDEP NPDES Permits for coal mining activities.
5. The WVDEP has evaluated agency records beginning with October 1, 2017 through October 31, 2020 regarding Brooks Run’s Permit(s), DMRs, and other related information, including information submitted by the Brooks Run at the request of WVDEP, and has completed an evaluation of Brooks Run’s DMRs compliance.
6. 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 3-A and 3-B which list the WVDEP NPDES Permits that have violations.
7. Based on its evaluation, the WVDEP has documented number (1) Single Event Violation of WVDEP NPDES Permit No. WV1009885 which occurred on July 21, 2018.

**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. Brooks Run 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	PARAMETER
WV1009885	001, 003, 004, 005, 006, 007, 008, 009, 014	Selenium, Total Recoverable

2. Brooks Run shall comply with the Compliance Schedule and reporting requirements contained in Attachment 1.
3. Within 90 days of entry of this Order, Brooks Run 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 Brooks Run 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 Brooks Run 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, Brooks Run 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 Brooks Run WVDEP NPDES violations of the Permit(s), Brooks Run 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 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 57<sup>th</sup> 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 October 1, 2017 through October 31, 2020 in relation to the specified Permits.
8. Stipulated Penalties
  - a. Beginning with the effective date of this Order, Brooks Run 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 15<sup>th</sup> 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 16<sup>th</sup> through 30<sup>th</sup> 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 31<sup>st</sup> 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 November 1, 2020 through the termination date of this Order, Brooks Run shall be liable for stipulated penalties for effluent violations of 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 Brooks Run fails to submit a required discharge monitoring report for one or more outlets with limits.

- c. For the period beginning October 1, 2020 through the termination date of this Order, Brooks Run shall be liable for stipulated penalties for SEVs in accordance with the West Virginia Code of State Rules §47-30B – 7.1.a through 7.1.d.

### OTHER PROVISIONS

1. Brooks Run 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, Brooks Run 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, Brooks Run 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 Brooks Run 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, Brooks Run 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 Brooks Run 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 Brooks Run 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 Brooks Run (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 Brooks Run 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 Brooks Run 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 Brooks Run, its successors and assigns.

7. The Permits that are included under Table A of the Order for Compliance sections of this Order shall terminate upon the verification of WVDEP that Brooks Run 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 upon full payment of the Civil Administrative Penalty.

  
\_\_\_\_\_  
Company Representative, Representative Title  
Brooks Run Mining Company, LLC

11/30/2020  
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 90 days of effective date of this order
b. Submit a <b>Quarterly</b> Status Report to the Assistant Deputy Director, Permit Inspector and NPDES Supervisor for each listed Permit	Within 60 days after submittal of Corrective Action Plan through termination of this order
c. Continue to monitor all applicable permits/outlets for Se concentrations per approved final effluent limits and submit per NPDES permit conditions	Monthly per Discharge Monitoring Report requirements

**Attachment 2**

**Payment Schedule**

1. Payment of 20% of Civil Administrative Penalty to be paid within 30 days of execution of Order by the Director - \$25,000.00
2. Payment of \$10,000.00 by January 30, 2021
3. Payment of \$10,000.00 by February 30, 2021
4. Payment of \$10,000.00 by March 30, 2021
5. Payment of \$10,000.00 by April 30, 2021
6. Payment of \$10,000.00 by May 30, 2021
7. Payment of \$10,000.00 by June 30, 2021
8. Payment of \$10,000 by July 30, 2021
9. Payment of \$10,000.00 by August 31, 2021
10. Payment of \$10,000.00 by September 30, 2021
11. Payment of \$10,000.00 by October 31, 2021

ATTACHMENT 3-A

WV0050318; Outlet 026; DMR Exceedances - MAX. DAILY - 01/01/2016-12/31/18						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max.	Reported Max.	% Exceedance	Min.	Mod.	Maj.
4/30/2018	01045 - Iron, Total (as Fe)	MG/L	2.46	3.64	47.97%	X		

WV0050318 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	0	0

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

WV0050857; Outlet 012; 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	0.43	0.51	18.60%	X		
2/28/2018	01045 - Iron, Total (as Fe)	MG/L	1.14	1.32	15.79%	X		

WV0050857; Outlet 013; 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.
8/31/2018	01105 - Aluminum, Total (as Al)	MG/L	0.75	1.95	160.00%		X	

WV0050857; Outlet 013; 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.
1/31/2018	01105 - Aluminum, Total (as Al)	MG/L	0.43	1.76	309.30%			X

WV0050857 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	2	1	1

plus pH	Min.	Mod.	Maj.
	0	0	0

WV0050857 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	2	1	1

WV0060194; Outlet 004 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.
5/31/2018	01045 - Iron, Total (as Fe)	MG/L	1.12	1.22	8.93%	X		

WV0060194 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	0	0

plus pH	0	0	0
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WV0060194 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	0	0

WV1000527; 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.
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	11.5	13.6	18.26%	X		

WV1000527; 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.
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	6.6	6.8	3.03%	X		

WV1000527 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	2	0	0

plus pH	Min.	Mod.	Maj.
	0	0	0

WV1000527 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	2	0	0

WV1010221; 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.
12/31/2018	01045 - Iron, Total (as Fe)	MG/L	2.46	3.16	28.46%	X		

WV1010221 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	0	0

plus pH	0	0	0
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WV1010221 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	1	0	0

WV1018078; 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.
7/31/2018	01045 - Iron, Total (as Fe)	MG/L	2.46	2.48	0.81%	X		

WV1018078; 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.
7/31/2018	01045 - Iron, Total (as Fe)	MG/L	1.42	1.99	40.14%		X	
8/31/2018	01045 - Iron, Total (as Fe)	MG/L	1.42	1.59	11.97%	X		

WV1018078 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	2	1	0

plus pH	0	0	0
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WV1018078 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	2	1	0



WV0050920; 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.
4/30/2018	01105 - Aluminum, Total (as Al)	MG/L	0.75	0.83	10.67%	X		
WV0050920; 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.
4/30/2018	01105 - Aluminum, Total (as Al)	MG/L	0.43	0.52	20.93%	X		
7/31/2018	01105 - Aluminum, Total (as Al)	MG/L	0.43	0.596	38.60%	X		
WV0050920; 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.
10/31/2018	01055 - Manganese, Total (as Mn)	MG/L	4	14.2	255.00%		X	
10/31/2018	01045 - Iron, Total (as Fe)	MG/L	2.46	14.8	501.63%		X	
10/31/2018	01105 - Aluminum, Total (as Al)	MG/L	0.75	19.3	2473.33%			X
WV0050920; 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.
10/31/2018	01105 - Aluminum, Total (as Al)	MG/L	0.43	9.65	2144.19%			X
10/31/2018	01055 - Manganese, Total (as Mn)	MG/L	2	7.13	256.50%		X	
10/31/2018	01045 - Iron, Total (as Fe)	MG/L	1.42	7.51	428.87%			X

WV0050920 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	3	3	3

plus pH	0	0	0
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WV0050920 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.



WV1009885; 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.
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	11.42	39.27%	X		
5/31/2018	00981 - Selenium, Total Recoverable	MG/L	8.2	8.79	7.20%	X		
WV1009885; 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.
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	11.42	142.98%		X	
5/31/2018	01105 - Aluminum, Total (as Al)	MG/L	0.43	0.58	34.88%	X		
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	8.79	87.02%		X	
6/30/2018	01105 - Aluminum, Total (as Al)	MG/L	0.43	0.601	39.77%	X		
WV1009885; 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.
8/31/2018	01055 - Manganese, Total (as Mn)	MG/L	4	4.25	6.25%	X		
9/30/2018	01055 - Manganese, Total (as Mn)	MG/L	4	9.27	131.75%		X	
WV1009885; 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.
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	4.73	0.64%	X		
8/31/2018	01055 - Manganese, Total (as Mn)	MG/L	2	2.47	23.50%	X		
9/30/2018	01055 - Manganese, Total (as Mn)	MG/L	2	5.22	161.00%		X	
WV1009885; Outlet 003; 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.
2/28/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	13.55	65.24%	X		
WV1009885; Outlet 003; 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	00981 - Selenium, Total Recoverable	UG/L	4.7	13.55	188.30%		X	
WV1009885; Outlet 004; 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.
10/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	8.24	0.49%	X		
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	14.6	78.05%	X		
WV1009885; Outlet 004; 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.
8/31/2018	01055 - Manganese, Total (as Mn)	MG/L	2	2.7	35.00%	X		
9/30/2018	01055 - Manganese, Total (as Mn)	MG/L	2	2.15	7.50%	X		
10/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	5.13	9.15%	X		
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	10.7	127.66%		X	
WV1009885; 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.
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	58.24	610.24%	X		X
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	64.94	691.95%			X
7/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	230.49	230.49%		X	
WV1009885; 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.
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	49.68	957.02%			X
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	55	1070.21%			X
7/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	13.6	189.36%		X	

WV1009885; Outlet 007; 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.
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	73.21	792.80%			X
9/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	126	1436.59%			X
WV1009885; Outlet 007; 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.
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	73.21	1457.66%			X
9/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	126	2580.85%			X
WV1009885; Outlet 008; 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.
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	49.74	506.59%		X	
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	41.96	411.71%		X	
6/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	8.65	5.49%	X		
8/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	9.38	14.39%	X		
10/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	10.8	31.71%	X		
11/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	10.6	29.27%	X		
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	16.4	100.00%	X		
WV1009885; Outlet 008; 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.
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	45.12	860.00%			X
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	39.38	737.87%			X
6/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	8.65	84.04%		X	
8/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	6.88	46.38%		X	
10/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	6.36	35.32%	X		
11/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	8.02	70.64%		X	
12/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	10.1	114.89%		X	

WV1009885; Outlet 009; 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.
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	44.58	443.66%		X	
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	40.75	396.95%		X	
6/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	10.9	32.93%	X		

WV1009885; Outlet 009; 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.
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	36.5	676.60%			X
5/31/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	37	687.23%			X
6/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	9.66	105.53%		X	

WV1009885; 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.
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	35.63	334.51%		X	

WV1009885; Outlet 014; 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.
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	35.63	658.09%			X

WV1009885; Outlet 036; 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.
4/30/2018	01055 - Manganese, Total (as Mn)	MG/L	2	3.21	60.50%		X	
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	4.7	5.16	9.79%	X		

WV1009885; Outlet 082; 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.
2/29/2016	01105 - Aluminum, Total (as Al)	MG/L	0.75	5.95	693.33%			X
2/29/2016	01045 - Iron, Total (as Fe)	MG/L	2.46	6.47	163.01%		X	
4/30/2018	01105 - Aluminum, Total (as Al)	MG/L	0.75	15.03	1904.00%			X
4/30/2018	01045 - Iron, Total (as Fe)	MG/L	2.46	9.91	302.85%		X	
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	8.2	16.41	100.12%		X	

WV1009885; Outlet 082; 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.
4/30/2018	01105 - Aluminum, Total (as Al)	MG/L	0.43	15.03	3395.35%			X
4/30/2018	01055 - Manganese, Total (as Mn)	MG/L	2	2.49	24.50%	X		
4/30/2018	01045 - Iron, Total (as Fe)	MG/L	1.42	9.91	597.89%			X
4/30/2018	00981 - Selenium, Total Recoverable	UG/L	6.6	16.41	148.64%		X	
4/30/2018	00530 - Total Suspended Solids	MG/L	35	48.8	39.43%	X		

WV1009885 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	24	23	17

plus pH	0	0	0
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WV1009885 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	24	23	17

WV1009885; Outlet 082; 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.
2/28/2018	01105 - Aluminum, Total (as Al)	MG/L	0.75	1	33.33%	X		

WV1009885; Outlet 082; 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	0.43	0.58	34.88%	X		

WV1009885 non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	2	0	0

plus pH	Min.	Mod.	Maj.
	0	0	0

WV1009885 Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	2	0	0



ALL non pH Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	37	28	21

plus pH	0	0	0
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ALL Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	37	28	21



## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

WV0050318, WV0050857,  
WV0060194, WV1000527,  
WV1010221, WV1018078,  
WV0050920, WV1009885,  
WV1017977

**Responsible Party:** Brooks Run Mining Company, LLC **WVNPDES No.:** \_\_\_\_\_

**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	TAI	TAI	TAI	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	
<b>Average Potential for Harm Factor</b>			1	1	1.2	1.4	1.4	1.6	1.8	1.8	2	1.2	1.2	1.4	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	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.

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			TIAL	TIAL	TIAL		FTS		FOF (7)					
a)	Amount of Pollutant Released	1 to 3	1	1	2				2					
b)	Toxicity of Pollutant	0 to 3	3	3	3				1					
c)	Sensitivity of the Environment	0 to 3	2	2	2				1					
d)	Length of Time	1 to 3	1	1	1				3					
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1				1					
<b>Average Potential for Harm Factor</b>			1.6	1.6	1.8	No	No	No	1.6	No	No	No	No	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>												
	Degree of Non-Compliance	1 to 3	1	2	3				2					

		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	77	\$77,000
No T	Minor	Moderate	\$1,500	62	\$93,000
No T	Moderate	Major	\$4,200	31	\$130,200
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		\$0
T I	Moderate	Moderate	\$3,200		\$0
T I	Moderate	Major	\$4,400		\$0
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	9	\$90,000
0	FALSE	FALSE	FALSE	1	\$0
FOF (7)	Moderate	Moderate	\$3,600	19	\$68,400
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
<b>Total Base Penalty</b>					<b>\$458,600</b>

**Penalty Adjustment Factors**  
(pursuant to 47CSRI-6.2)

**Penalty Adjustment Factor**

- 7.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase
- 7.2.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
- 7.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)
- 7.2.b.7 - Public Interest (increase to be determined)
- 7.2.b.8 - Loss of enjoyment of the environment (increase to be determined)
- 7.2.b.9 - Staff investigative costs (increase to be determined)
- 7.2.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)
- 7.2.b.2 - Good Faith - 10% decrease to 10% increase
- 7.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease
- 7.2.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
7.2.b.1 - Willfulness and/or negligence -	20		\$91,720
7.2.b.4 - Compliance/noncompliance history -	15		\$68,790
7.2.b.6 - Economic benefits - (flat monetary increase)	\$11,000		\$11,000
7.2.b.7 - Public Interest - (flat monetary increase)			\$0
7.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
7.2.b.9 - Investigative costs - (flat monetary increase)			\$0
7.2.b.10 - Other factors (size of violator)			\$0
7.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
7.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		Decrease to \$125,000 per 22-11- 22a(b)(1)	<b>\$505,170</b>
Public Notice Costs (flat monetary increase)	\$60		\$60
7.2.b.2 - Good Faith - Increase			\$0
7.2.b.2 - Good Faith - Decrease			\$0
7.2.b.3 - Cooperation with the Secretary			\$0
7.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$333,600)</b>
<b>Penalty =</b>			<b>\$125,000</b>

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	\$11,000
<b>Estimated Economic Benefit</b>	<b>\$11,000</b>
<b>Comments:</b> Competitive Advantage @\$1,000/quarter x 11 quarters = \$11,000	