



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

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

TO: Big Sky Enterprises, LLC.
Attn: Craig Turner
8 Fly Away Drive
Beaufort, SC 29907

DATE: December 15, 2015
ORDER NO.: 8435

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. to Big Sky Enterprises, LLC. (hereinafter "Big Sky").

FINDINGS OF FACT

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

1. Big Sky is conducting land disturbance activity in Morgantown, Monongalia County, West Virginia. Big Sky was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106099, on October 3, 2012.
2. On March 9, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
 - a. 22-11-8 and 47CSR10 Section 3.1-Big Sky failed to obtain a WV/NPDES Permit prior to commencing construction activity with land disturbance of one (1) acre or greater. The site appeared to be in excess of three (3) acres and therefore required a Site Registration Application.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W-NW-TWH-030912-001 was issued to Big Sky.

3. On November 28, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Big Sky's WV/NPDES permit were observed and documented:
 - a. Section B-Big Sky failed to comply with the approved Storm Water Pollution Prevention Plan (SWPPP). The sediment basins were not engineered as detailed in the sediment and erosion control plans. Specifically, the basin outlet riser structures and baffles were not installed as detailed in the approved SWPPP.
 - b. Section D.1-Big Sky failed to at all times properly operate and maintain all facilities and systems of treatment and control. Specifically, silt fence was unmaintained or missing throughout the site. A large slip was detected on the upslope side of basin Two (2).
 - c. Section G.4.e.2.A.i.c-Big Sky failed to immediately reseed areas where the seed failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding and mulching.
 - d. Section G.4.e.2.C.v-Big Sky failed to use a tracking procedure to ensure that adequate corrective actions were taken in response to deficiencies identified during the above mentioned erosion control inspection. Big Sky failed to maintain and/or make available to the inspectors records of said inspections.
 - e. Section G.4.e.2.A.ii.f-Big Sky failed to protect fill slopes by measures used to divert runoff away from fill slopes to conveyance measures such as pipe slope drains or stable channels.
 - f. Section G.4.e.2.A.i.b-Big Sky failed to initiate stabilization measures, such as seed and mulch, on portions of the site where construction activities had temporarily or permanently ceased for greater than seven (7) days and would not resume within twenty-one (21) days.

As a result of the aforementioned violations, NOV Nos. W-NW-TJK-112812-002, W-NW-TJK-112812-003, and four (4) warnings were issued to Big Sky.

4. On March 19, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Big Sky's WV/NPDES permit were observed and documented:
 - a. 47CSR2 Section 3.2.a and b-Big Sky caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the stream. Specifically, an unnamed tributary (UT) of Owl Creek in the vicinity of and downslope of Area Three (3) received significant sediment deposits.
 - b. Section B-Big Sky failed to comply with the approved SWPPP and the approved Groundwater Protection Plan (GPP). Sediment and erosion control devices were not in place as detailed in the approved SWPPP. The GPP states that there will not be fuel tanks on site; however, two (2) fuel tanks were observed on site, and one (1) fuel tank did not have secondary containment.
 - c. Section G.4.e.2.A.i-Big Sky failed to initiate stabilization measures, such as seed and mulch, on portions of the site (Area One) where construction activities had

temporarily or permanently ceased for greater than seven (7) days and would not resume within fourteen (14) days.

- d. Section G.4.d.1.B-Big Sky failed to maintain good housekeeping practices and a clean and orderly project. Big Sky failed to minimize exposure of construction wastes/trash to precipitation and to stormwater. Specifically, construction debris from the site in the form of plastic packaging was observed to be blown into the woodline.

As a result of the aforementioned violations, NOV Nos. W-NW-TWH-031915-001, W-NW-TWH-031915-002, and two (2) warnings were issued to Big Sky.

5. On April 3, 2015, WVDEP issued Unilateral Order No. 8271 to Big Sky in response to the aforementioned violations. The Order required Big Sky to:
 - a. Immediately cease and desist land development activity until all erosion and sediment control devices were installed according to the WV/NPDES permit and SWPPP, as determined by WVDEP personnel.
 - b. Immediately install and maintain necessary erosion and sediment control devices to prevent the release of sediment-laden water to waters of the State.
 - c. Within ten (10) days of the effective date of the Order, submit a plan of corrective action and schedule, outlining action items and completion dates for how and when Big Sky would achieve compliance with all pertinent laws and rules.
 - d. Contact WVDEP personnel for a follow up inspection to confirm all requirements of Unilateral Order No. 8271 had been met prior to restarting operations.
6. On April 27, 2015, WVDEP personnel received the proposed Plan of Corrective Action, as required by Item No. Two (2) under the Order for Compliance section of Unilateral Order No. 8271. WVDEP issued correspondence, dated April 27, 2015, communicating that the proposed Plan of Corrective Action was acceptable, approved, and incorporated as part of Unilateral Order No. 8271.
7. On April 29, 2015, WVDEP issued a letter in response to correspondence received from Big Sky concerning the termination of Unilateral Order No. 8271. WVDEP personnel observed and documented that Big Sky had achieved compliance with the terms and conditions of the Order. Pursuant to Item No. Four (4) in the "Other Provisions" section, Order No. 8271 was terminated.
8. On June 16, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Big Sky's WV/NPDES permit were observed and documented:
 - a. Section B-Big Sky failed to comply with the approved SWPPP. The clean water diversion upslope of the project was not installed as detailed on the engineered and approved SWPPP. This excess stormwater was being introduced to the disturbed footprint of the project and was being directed through the sediment traps, causing the traps to be overwhelmed beyond their functional capacity, which resulted in significant sediment releases offsite downslope.

- b. Section D.1-Big Sky failed to at all times properly operate and maintain all facilities and systems of treatment and control. Specifically, sediment traps and Ponds One through Five (1-5) had not been installed, operated, and maintained as engineered.
- c. Section G.4.e.2.D-Big Sky failed to develop a maintenance plan that provided that all erosion controls on the site were inspected at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event of greater than 0.5 inches of rain per twenty-four (24) hour period.
- d. Section G.4.e.2.C.v-Big Sky failed to develop a tracking procedure to ensure that adequate corrective actions had been taken in response to deficiencies identified during the above mentioned erosions and sediment control inspections. Records of said inspections were not maintained on site and were not made available to the inspector.

As a result of the aforementioned violations, NOV Nos. W-NW-TWH-061615-001, W-NW-TWH-061615-002, and two (2) Warnings were issued to Big Sky.

9. On July 9, 2015, WVDEP personnel conducted an 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-Big Sky caused conditions not allowable in waters of the State by creating distinctly visible solids in the receiving stream. Specifically, discharges from Ponds Two (2), Three (3), and Four (4) entered Owl Creek, causing a distinctly visible plume.

As a result of the aforementioned violation, NOV No. W-NW-TWH-070915-004 was issued to Big Sky.

10. On November 18, 2015, WVDEP personnel and a representative of Big Sky met to discuss the terms and conditions of this Order.

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. Big Sky shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within ten (10) days of the effective date of this Order, Big Sky shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Big Sky will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR106099 and Order No. 8435.

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.

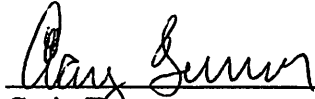
3. Because of Big Sky's Legislative Rule and permit violations, Big Sky shall be assessed a civil administrative penalty of fifteen thousand eight hundred forty-seven dollars (\$15,847) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management 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. **Big Sky 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, Big Sky 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, Big Sky 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 Big Sky 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, Big Sky 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 Big Sky becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Big Sky 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 Big Sky 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 Big Sky (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 Big Sky 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 Big Sky 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 Big Sky, its successors and assigns.**

7. This Order shall terminate upon Big Sky's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Craig Turner
Big Sky Enterprises, LLC.

12-21-15

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED
DEC 28 2015
ENVIRONMENTAL
ENFORCEMENT



P6162360

Pond 1 short circuiting from inlet to outlet without proper holding time as engineered



P6162361

Pond 1 with no stabilized inlet installed causing the inlet to erode into the sediment trap



P6162370

Pond 2 with no stabilized inlet and filled with sediment beyond functional capacity



P6162367

Pond 2 stabilized outlet has washed out and is no longer functional



P6162373

Pond 3 filled with sediment and receiving stormwater beyond its engineered functional capacity



P6162377

Pond 3 failed spilling its contents and has not been restored to its engineered functional capacity



P6162376

Pond 3 failed spilling its contents and has not been restored to its engineered functional capacity



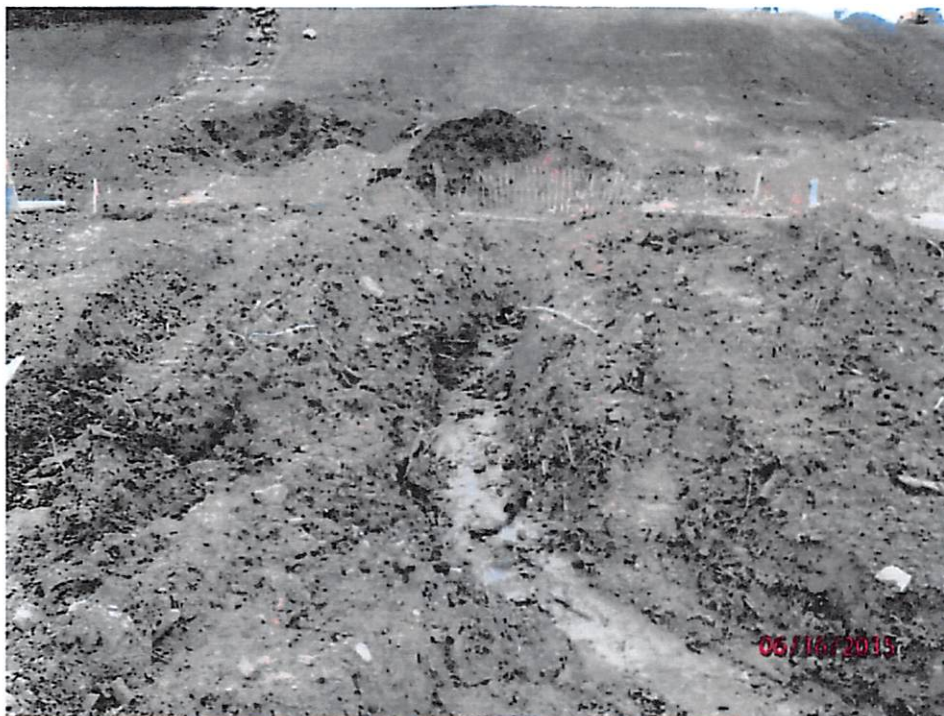
P6162378

Pond 3 muckings have been partially removed and disposed downslope with no controls in place



P6162382

Pond 3 failed spilling its contents and has not been restored to its engineered functional capacity



P6162387

Upslope clean stormwater being directed through and over loading Pond 3 contributing to failure



P6162394

Pond 4 conveyance measures had breached and have recently been repaired



P6162397

Pond 4 has recently been repaired. No stable inlet in place



P6162400

Pond 5 conveyance measures had breached and have been recently repaired



P6162401

Pond 5 with no stable inlet



P7092511

Ponds 2 & 3 discharges entering Owl Creek causing Conditions Not Allowable in waters of the State



P7092513

Ponds 2 & 3 discharges entering Owl Creek causing Conditions Not Allowable in waters of the State



P7092514

Owl Creek turbid down stream of Ponds 2 & 3 discharges entering the stream channel



P7092518

Ponds 2 & 3 discharges prior to entering Owl Creek



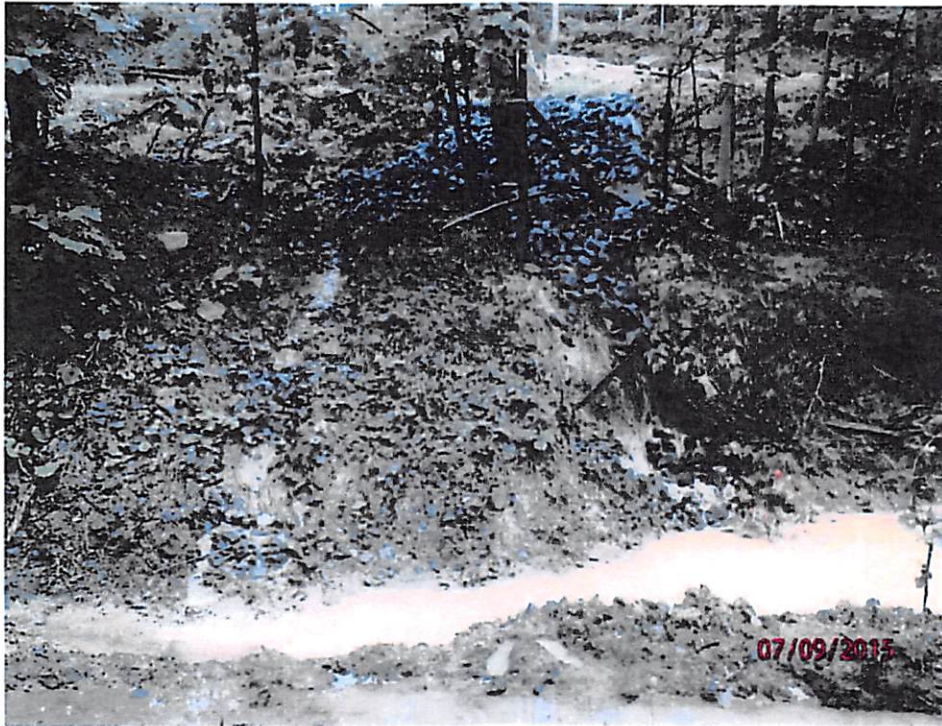
P7092520

Pond 3 not properly installed or maintained



P7092521

Pond 3 outfall and discharges



P7092523
Pond 4 outfall and discharges



P7092527
Pond 4 discharges prior to entering Owl Creek



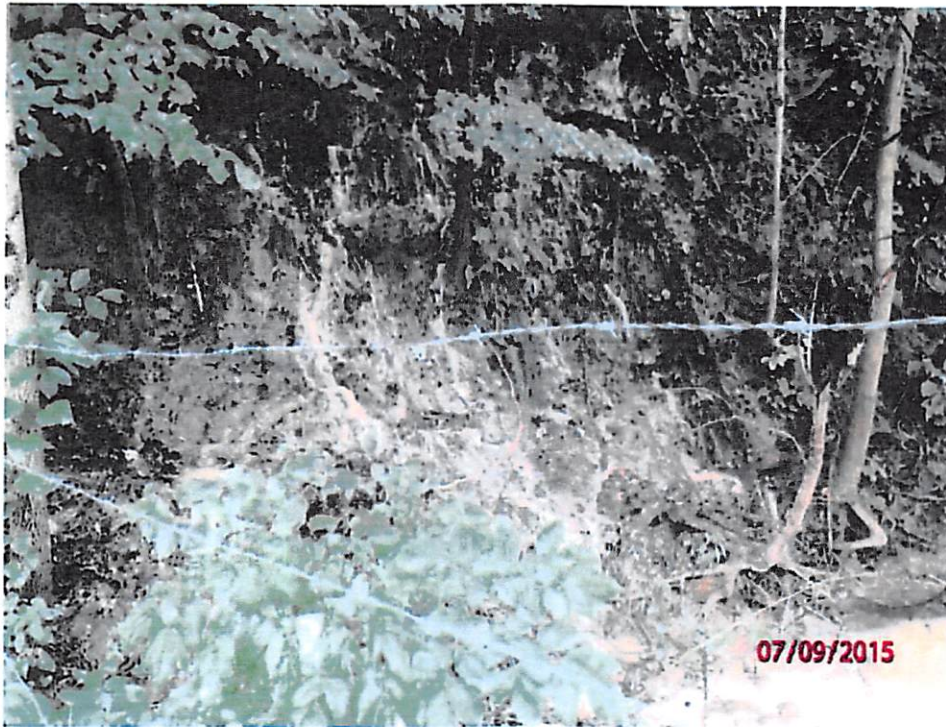
P7092528

Pond 4 discharges prior to entering Owl Creek



P7092531

Pond 4 discharges prior to entering Owl Creek



P7092504

Pond 4 discharges entering Owl Creek



P7092505

Pond 4 discharges entering Owl Creek (already turbid from Ponds 2 & 3 discharges)

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Big Sky Enterprises, LLC Receiving Stream: _____

Treatment System Design Maximum Flow: _____ MGD

Treatment System Actual Average Flow: _____ MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#														
			4a	4b	8a	8b	9a										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1										
d)	Length of Time	1 to 3	1	1	2	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1										
Average Potential for Harm Factor			1	1	1.2	1	1	No	No	No	No	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range															
	Degree of Non-Compliance	1 to 3	3	3	3	3	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.

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 -	10		\$1,220
6.2.b.4 - Compliance/noncompliance history	25		\$3,050
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,787		\$1,787
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)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$1,220)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,220)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$3,647
Penalty =			\$15,847

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	\$1,787
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$1,787
Comments: Delayed cost of proper installation of Ponds 1-5.	