



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
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Harold D. Ward, Cabinet Secretary
dep.wv.gov

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

TO: West Virginia Department to Transportation
Chad Saas, Environmental Coordinator
District 4
P.O. Box 4220
Clarksburg, WV 26302-4220

DATE: February 18, 2021

ORDER NO.: 9909

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 22-11-1 et seq. to West Virginia Department to Transportation (hereinafter "WVDOT").

FINDINGS OF FACT

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

1. WVDOT operates a rest area/welcome center located near Hazelton, Preston County, West Virginia. WVDOT was reissued WV/NPDES Water Pollution Control Permit No. WV0116246, Registration No. WVG980065, on February 14, 2018.
2. On April 27, 2020, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed and documented a dark effluent discharging at the outlet. In addition, a violation of the following section of the WV/NPDES permit was observed and documented:
 - a. Appendix A.II.1 - WVDOT failed to properly operate and maintain the facility. Specifically, the sand filters beds were flooded and contained algal growth and vegetation. In addition, the ultraviolet lights were not working to provide disinfection, as noted in the operator's log book, which also reflected irregular maintenance.

Promoting a healthy environment.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W20-39-030-TPD was issued to WVDOT.

3. On May 4, 2020, WVDEP personnel conducted a follow-up sampling event at the aforementioned facility. As a result, a violation of the following section of the WV/NPDES permit was observed and documented:
 - a. Section A.3 – WVDOT exceeded its permitted effluent limits. Specifically, the effluent sample resulted in a Fecal Coliform level of 4,800 counts/100mL, which is a major violation of the Instantaneous Maximum Limit of 500 counts/100mL (Table One).

As a result of the aforementioned violation, NOV No. W20-39-029-TPD was issued to WVDOT.

4. On October 5, 2020, WVDEP personnel conducted a review of facility records from the time period of April 1, 2018 through March 31, 2020. During this review, the following violations of the terms and conditions of WVDOT's WV/NPDES permit were observed:
 - a. Section A.3 – Forty-two (42) exceedances of WVDOT's permit parameters were observed and documented (Table Two). These exceedances can be further defined as:
 - i. Minor violations-three (3)
 - ii. Moderate violations-fourteen (15)
 - iii. Major violations-twenty-two (24)
 - b. Section G.2 – WVDOT failed to submit sample results on its Discharge Monitoring Reports (DMRs) for each regulated pollutant parameter. Specifically, WVDOH failed to report Total Residual Chlorine results for the following three sampling periods: 2nd Quarter 2018, 4th Quarter 2018, and 1st Quarter 2019.
 - c. Section G.1 – WVDOT failed to submit Discharge Monitoring Reports (DMRs) for the 1st Quarter of 2020 within twenty (20) days after the end of the sampling period. Upon subsequent review, WVDEP personnel determined that 1st Quarter 2020 DMRs were not submitted until August 6, 2020.
5. On October 5, 2020, WVDEP personnel and WVDOT representatives met to discuss the terms and conditions of this Order.
6. On December 4, 2020, WVDOT submitted a Plan of Corrective Action (POCA) and schedule (attached) that outlined action items and completion dates for how and when WVDOT will achieve compliance with all pertinent laws and rules. The POCA was subsequently approved by WVDEP personnel.

ORDER FOR COMPLIANCE

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

1. WVDOT shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Upon the effective date of this Order, the aforementioned approved POCA and schedule, dated December 4, 2020, shall be incorporated into and become part of this Order. Failure to adhere to the approved POCA and schedule is a violation of this Order.
3. Because of WVDOT's permit violations, WVDOT shall be assessed a civil administrative penalty of seventy-five thousand one hundred seventy-five dollars (\$75,175).

Thirty-seven thousand five hundred eighty-seven dollars and fifty cents (\$37,587.50) of the civil administrative penalty shall 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.

The remaining thirty-seven thousand five hundred eighty-seven dollars and fifty cents (\$37,587.50) of the civil administrative penalty shall be held in abeyance, contingent upon proper completion of each task in accordance with the aforementioned December 4, 2020 approved schedule of milestones. WVDOT agrees to pay the thirty-seven thousand five hundred eighty-seven dollars and fifty cents (\$37,587.50) held in abeyance within thirty (30) days of notice from WVDEP that WVDOT has failed to comply with the approved schedule of milestones.

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

Michael Cronin

Michael G. Cronin, P.E.
District Four Engineer/Manager
West Virginia Department of Transportation

3/10/21

Date

Public Notice begin:

Date

Public Notice end:

Date

Katheryn Emery, P.E., Acting Director
Division of Water and Waste Management

Date

Table One: WVDOT Sampling Exceedance Summary

Outlet 001 Sampling Exceedance - INSTANTANEOUS. MAX.						Degree of non-compliance		
Date	Parameter	Units	Permitted Inst. Max.	Sample Result	% Exceedance	Min	Mod	Maj
5/4/20	Fecal Coliform	cnts/100mL	500	4800	860%	-	-	X

Table Two: WVDOT DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - April 2018 through March 2020						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
6/2018	BOD 5-Day	mg/l	5	34.5	590%	-	-	X
9/2018	BOD 5-Day	mg/l	5	17.4	248%	-	X	-
12/2018	BOD 5-Day	mg/l	10	10.6	6%	X	-	-
6/2019	BOD 5-Day	mg/l	5	26.5	430%	-	-	X
6/2018	Ammonia Nitrogen	mg/l	3	74.5	2383%	-	-	X
9/2018	Ammonia Nitrogen	mg/l	3	38.1	1170%	-	-	X
12/2018	Ammonia Nitrogen	mg/l	6	49	717%	-	-	X
3/2019	Ammonia Nitrogen	mg/l	6	32	433%	-	-	X
6/2019	Ammonia Nitrogen	mg/l	3	40.6	1253%	-	-	X
9/2019	Ammonia Nitrogen	mg/l	3	5.97	99%	-	X	-
3/2020	Ammonia Nitrogen	mg/l	6	10.9	82%	-	X	-
9/2018	Total Residual Chlorine	ug/l	28	400	1329%	-	-	X
6/2018	Fecal Coliform	Cnts/100ml	200	6000	2900%	-	-	X
9/2018	Fecal Coliform	Cnts/100ml	200	6000	2900%	-	-	X
12/2018	Fecal Coliform	Cnts/100ml	200	530	165%	-	X	-
3/2019	Fecal Coliform	Cnts/100ml	200	1200	500%	-	-	X
6/2019	Fecal Coliform	Cnts/100ml	200	6000	2900%	-	-	X
9/2019	Fecal Coliform	Cnts/100ml	200	3800	1800%	-	-	X
12/2019	Fecal Coliform	Cnts/100ml	200	6000	2900%	-	-	X
3/2020	Fecal Coliform	Cnts/100ml	200	6000	2900%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - April 2018 through March 2020						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
6/2018	BOD 5-Day	mg/l	10	34.5	245%	-	X	-
9/2018	BOD 5-Day	mg/l	10	17.4	74%	X	-	-
6/2019	BOD 5-Day	mg/l	10	26.5	165%	-	X	-
6/2018	Ammonia Nitrogen	mg/l	6	74.5	1142%	-	-	X
9/2018	Ammonia Nitrogen	mg/l	6	38.1	535%	-	X	-
12/2018	Ammonia Nitrogen	mg/l	12	49	308%	-	X	-
3/2019	Ammonia Nitrogen	mg/l	12	32	167%	-	X	-
6/2019	Ammonia Nitrogen	mg/l	6	40.6	577%	-	X	-
9/2018	Total Residual Chlorine	ug/l	57	400	602%	-	-	X
6/2018	Fecal Coliform	Cnts/100ml	400	6000	1400%	-	-	X
9/2018	Fecal Coliform	Cnts/100ml	400	6000	1400%	-	-	X
12/2018	Fecal Coliform	Cnts/100ml	400	530	33%	X	-	-
3/2019	Fecal Coliform	Cnts/100ml	400	1200	200%	-	X	-
6/2019	Fecal Coliform	Cnts/100ml	400	6000	1400%	-	-	X
9/2019	Fecal Coliform	Cnts/100ml	400	3800	850%	-	-	X
12/2019	Fecal Coliform	Cnts/100ml	400	6000	1400%	-	-	X
3/2020	Fecal Coliform	Cnts/100ml	400	6000	1400%	-	-	X

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS, MIN. - April 2018 through March 2020						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
6/2018	D.O.	mg/l	6.0	3.25	45.8%	-	X	-
9/2018	D.O.	mg/l	6.0	2.86	52.3%	-	X	-
12/2018	D.O.	mg/l	6.0	3.55	40.8%	-	X	-
6/2019	D.O.	mg/l	6.0	1.5	75.0%	-	-	X
9/2019	D.O.	mg/l	6.0	3.07	48.8%	-	X	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		3	15	24

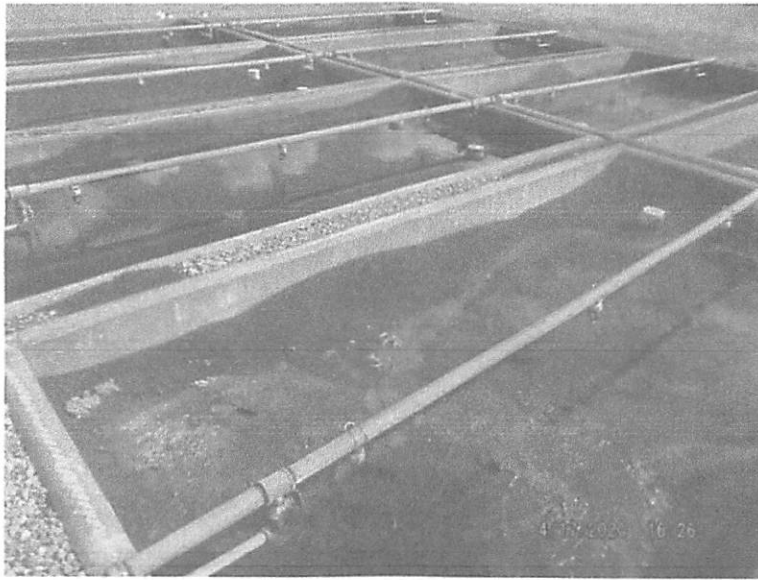


Flooded sand filters.

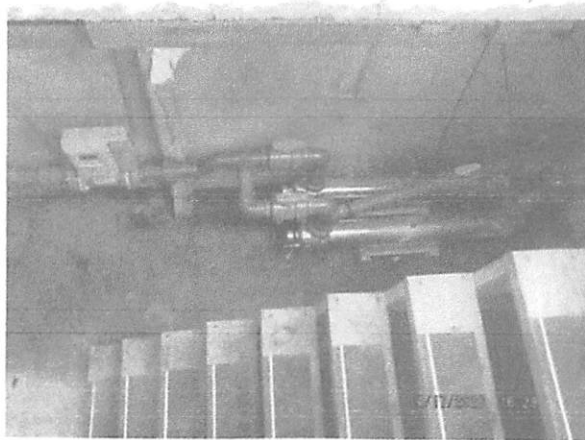


Flooded sand filter with algae and leaf buildup.

Photo Log – WVDOT I-68 Welcome Center – 4/27/2020 (incorrect date stamp on photos)



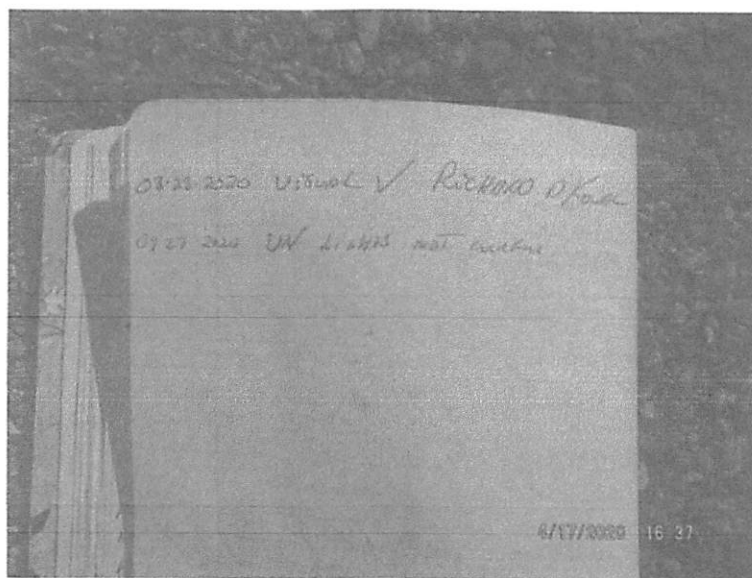
Flooded filter beds. Algal growth. Media not level.



UV lights not working.

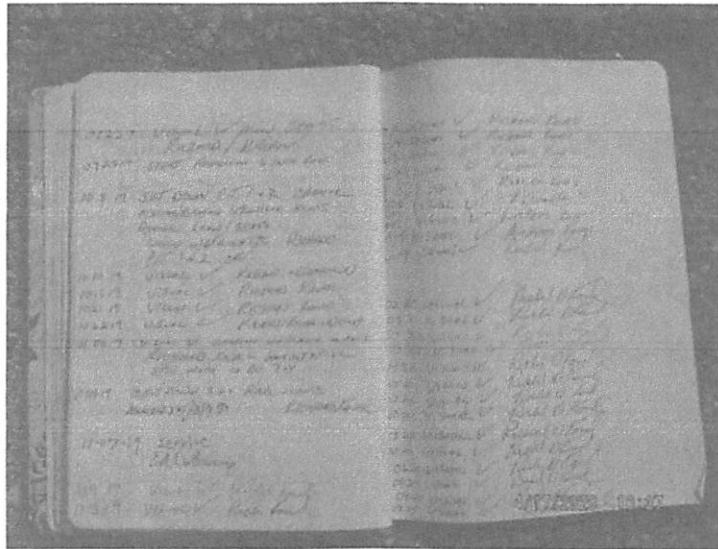


Dark effluent at discharge point.



Operator notes UV lights not working. Over four weeks since last recording in book.

Photo Log – WVDOT I-68 Welcome Center – 4/27/2020 (incorrect date stamp on photos)



Record book indicates irregular maintenance.

WVDOH Corrective Action Plan**Consent Order #9909****I-68 Welcome Center and Rest Area Treatment Plant
near Hazelton, Preston County**

1	Routine Inspections: These inspections will include but not limited to testing DO, testing PH, assure filters are draining and free of debris, inspection of UV bulbs to assure lights are functional, visual discharge inspection, and checking all tanks for proper levels. (See Attached Checklist)	3 Days per week (Minimum)
2	Routine Maintenance will be based largely from routine inspection findings. As seen on the checklist a lot of the things will be done weekly.	Weekly
3	Clean/replace UV bulb, clean quartz lens and honey comb filters	Monthly (minimum)
4	Pumping out holding tanks.	Quarterly
5	Additional effluent sampling	Quarterly
6	Third-party consultant technician for quality control purposes	Quarterly
7	Design approximately 6820 LF of sanitary sewer line to connect to Hazelton PSD at a lift station near the Microtel along Preston CR12/05.	Completion December 31, 2020
8	Send to FHWA for Approval - controlled access R/W use for sanitary sewer line	January 04, 2021
9	Purchase Right of Way for tie-in	March 31, 2021
10	Acquire Environmental Documents (including - working with Hazelton PSD to obtain Permits from WVDEP & the PSC for Sanitary Sewer Connection)	March 31, 2021
11	Advertise for construction	April 01, 2021
12	Award construction Project	June 01, 2021
13	Start Construction	July 01, 2021
15	End Construction	November 30, 2021

Note:

(a)WVDOH will submit a written request for an extension and a revised schedule for WVDEP's consideration if there are delays due to unforeseen circumstances.

(b)Proper procedures will be followed to decommission existing Treatment Plant.

November 30, 2021

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: WVDOT **Receiving Stream:** Little Sandy Creek/Cheat River

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#											
			2a	3a	4aI	4aII	4aIII	4b	4c					
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1					
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	0	0					
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	0	0					
d)	Length of Time	1 to 3	1	1	1	1	1	1	1					
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	0	0					
	Average Potential for Harm Factor		1	1	1	1	1	0.4	0.4	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	3	1	2	3	1	1					

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 $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

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

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, 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.

[illegible]

		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
2a	Minor	Major	\$2,000	1	\$2,000
3a	Minor	Major	\$2,000	1	\$2,000
4ai	Minor	Minor	\$1,000	3	\$3,000
4aii	Minor	Moderate	\$1,500	15	\$22,500
4aiii	Minor	Major	\$2,000	24	\$48,000
4b	Minor	Minor	\$400	3	\$1,200
4c	Minor	Minor	\$400	1	\$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
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$79,100

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.

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		\$7,910
6.2.b.4 - Compliance/noncompliance history -			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
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)		5	(\$3,955)
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			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$7,910)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$3,925)
Penalty =			\$75,175

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	
Estimated Economic Benefit	\$0
Comments: Economic benefit is not warranted.	