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west virginia department of environmental protection

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

Harold D. Ward, Cabinet Secretary  
dep.wv.gov

**CONSENT ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL AND GROUNDWATER PROTECTION ACTS  
WEST VIRGINIA CODE CHAPTER 22, ARTICLES 11 AND 12**

TO: Loudin Construction LLC and/or  
Loudin and Sons Properties LLC  
Attn: Joe Loudin  
PO Box 2404  
Buckhannon, WV 26201

DATE: December 18, 2025

ORDER NO.: 10398

**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. and 22-12-1 et seq. to Loudin Construction LLC and/or Loudin and Sons Properties LLC (hereinafter “Loudin”).

**FINDINGS OF FACT**

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

1. Loudin is conducting land disturbance activity near Buckhannon, Upshur County, West Virginia.
2. On April 16, 2024, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed and documented the following deficiencies: land disturbing activities that exceeded one acre in size were observed without any erosion and sediment controls in place; the land had been cleared and graded into a pad; woody debris was being burned; due to a lack of erosion and sediment controls, sediment deposits were documented as existing well outside of cleared areas; on the south side of the project, closest to U.S. Route 33, sediment had discharged down a low area in the hillside toward

Promoting a healthy environment.

the ditch line for the U.S. Route 33 highway; on the eastern side of the project, sediment had been allowed to discharge into a small ephemeral stream (UNT of Sand Run). In addition, a violation of the following section of West Virginia Code was observed and documented:

- a. 22-11-8.b(2) – Loudin created an outlet for the discharge of wastes into waters of the State (UNT of Sand Run) without an authorized WV/NPDES permit.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W24-49-042-JHH was issued to Loudin.

3. On June 18, 2024, WVDEP personnel conducted an investigation resulting from a citizen's complaint. During the investigation, WVDEP personnel observed and documented the following deficiencies: land disturbing activities that exceeded one acre in size were observed without any erosion and sediment controls in place; major erosion rills/gullies had formed on the fill slope for the pad since the last site inspection on April 16, 2024; the erosion rills/gullies were contributing to the deposition of sediment beyond the cleared area of the project; on the south side of the project, closest to U.S. Route 33, sediment had discharged down a low area in the hillside toward the ditch line for the U.S. Route 33 highway; on the eastern side of the project, sediment had been allowed to discharge into a small ephemeral stream (UNT of Sand Run). In addition, a violation of the following section of West Virginia Code was observed and documented:

- a. 22-11-8.b(2) – Loudin created an outlet for the discharge of wastes into waters of the State (UNT of Sand Run) without an authorized WV/NPDES permit.

As a result of the aforementioned violation, NOV No. W24-49-043-JHH was issued to Loudin.

4. On July 18, 2024, WVDEP personnel conducted an investigation resulting from a citizen's complaint. During the investigation, WVDEP personnel observed and documented the following deficiencies: land disturbing activities that exceeded one acre in size were observed without any erosion and sediment controls in place; an area on the previously constructed pad had been cleared and surveyed for what appeared to be a house since the June 18, 2024 investigation; major erosion rills/gullies were still present, as was a lack of surface stabilization which was contributing to sediment laden water discharging off the site at low points; on the south side of the project, closest to U.S. Route 33, sediment had discharged down a low area in the hillside toward the ditch line for the U.S. Route 33 highway; on the eastern side of the project, sediment had been allowed to discharge into a small ephemeral stream (UNT of Sand Run). In addition, a violation of the following section of West Virginia Code was observed and documented:

- a. 22-11-8.b(2) – Loudin created an outlet for the discharge of wastes into waters of the State (UNT of Sand Run) without an authorized WV/NPDES permit.

As a result of the aforementioned violation, NOV No. W24-49-044-JHH was issued to Loudin.

5. On August 1, 2024, WVDEP personnel conducted an inspection of the facility. During the investigation, WVDEP personnel observed and documented the following deficiencies: new earth disturbing activity related to home construction had occurred; on the south side of the project, closest to U.S. Route 33, sediment had discharged down a low area in the hillside toward the ditch line for the U.S. Route 33 highway; and on the eastern side of the project, sediment had been allowed to discharge into a small ephemeral stream (UNT of Sand Run). In addition, violations of the following sections of West Virginia Code and West Virginia Legislative Rules were observed and documented:
  - a. 22-11-8.b(2) – Loudin created an outlet for the discharge of wastes into waters of the State (UNT of Sand Run) without an authorized WV/NPDES permit.
  - b. 47CSR58-7.1 – Loudin allowed a chemical mixture to flow onto or under the land surface in such a manner that could impact groundwater quality. Concrete washout had been placed directly onto the ground near the edge of the pad and had discharged beyond the boundary of the project/property.

As a result of the aforementioned violations, NOV No. W24-49-045-JHH was issued to Loudin.

6. On August 13, 2024, WVDEP personnel conducted an investigation resulting from a citizen's complaint. During the investigation, WVDEP personnel observed and documented the following deficiencies: land disturbing activities greater than one (1) acre in size were observed; sediment laden water was discharging from the land disturbance into a conveyance that leads to a UNT of Sand Run; and there were no erosion and sediment controls installed to treat stormwater discharges from the disturbed area. In addition, a violation of the following section of West Virginia Code was observed and documented:
  - a. 22-11-8.b.(2) – Loudin created an outlet for the discharge of wastes into waters of the State (UNT of Sand Run) without an authorized WV/NPDES permit.

As a result of the aforementioned violation, NOV No. W24-49-013-TJC was issued to Loudin.

7. On September 27, 2024, WVDEP personnel issued Order No. 10314 to Loudin in response to the aforementioned violations.
8. On October 10, 2024, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel noted that solid waste was being burned at the site. In addition, violations of the following sections of West Virginia State Code were observed and documented:
  - a. 22-11-1 et seq. – Loudin failed to comply with the terms and conditions of Order No. 10314. Specifically, Loudin failed to comply with Order For Compliance Item No Five (5) by failing to install/maintain adequate controls and by failing to temporarily mulch all disturbed areas. There was evidence of sediment and

sediment laden water from unstabilized areas bypassing installed compost filter sock and discharging into an existing culvert that leads to the UNT of Sand Run.

- b. 22-11-8.b.(2) – Loudin created an outlet for the discharge of wastes into waters of the State (UNT of Sand Run) without an authorized WV/NPDES permit.

As a result of the aforementioned violations, NOV No. W24-49-071-TGW was issued to Loudin.

9. On February 13, 2025, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia State Code were observed and documented:
  - a. 22-11-1 et seq. – Loudin failed to comply with the terms and conditions of Order No. 10314.
    - i. Loudin failed to comply with Order For Compliance Item No Five (5) by failing to install/maintain adequate controls and by failing to temporarily mulch some disturbed areas. In multiple disturbed areas, erosion and sediment control devices were not in place. In the southern portion of the site, sediment deposits were discharging off the site due to a lack of maintenance. In addition, sediment and sediment laden water from the eastern portion of the site had bypassed installed compost filter sock and discharged into an existing culvert that leads to the UNT of Sand Run.
    - ii. Loudin failed to comply with Order For Compliance Item No. Two (2) by failing to cease and desist further land development activity in the western portion of the site.
  - b. 22-11-8.b.(2) – Loudin created an outlet for the discharge of wastes into waters of the State (UNT of Sand Run) without an authorized WV/NPDES permit.

As a result of the aforementioned violations, NOV No. W25-49-012-TGW was issued to Loudin.

10. On April 17, 2025, Loudin was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration Number WVR112907.
11. On May 14, 2025, WVDEP personnel conducted an inspection of the facility in response to a complaint. During the inspection, violations of the following sections of West Virginia State Code and the WV/NPDES permit were observed and documented:
  - a. Appendix B.I.1. – Loudin failed to properly operate and maintain all activities and installed Best Management Practices (BMPs). Installed filter sock in the southern and eastern portions of the project lacked maintenance.
  - b. Section I.B. – Loudin failed to comply with the approved Storm Water Pollution Prevention Plan (SWPPP). Several controls were not in place as detailed by the SWPPP, including a sediment trap, clean water diversion, interceptor ditch, and filter sock.
  - c. Section II.H.3.b.9. – Loudin failed to protect fill slopes in the southern and western portions of the project.

- d. Section I.G. – Loudin failed to prevent sediment-laden water from leaving the site without going through an appropriate device due to failure to install necessary BMPs and failure to properly operate/maintain installed BMPs.
- e. 22-11-1 et seq. – Loudin failed to comply with the terms and conditions of Order No. 10314.
  - i. Loudin failed to comply with Order For Compliance Item No Five (5) by failing to install/maintain adequate controls and by failing to temporarily mulch all disturbed areas.
  - ii. Loudin failed to comply with Order For Compliance Item No. Two (2) by failing to cease and desist further land development activity. A water line had been installed and building footers had been dug since the previous inspection, without the cease and desist provision having been lifted.

As a result of the aforementioned violations, NOV No. W25-49-023-TJC was issued to Loudin.

12. On June 1, 2025, WVDEP personnel conducted an inspection of the facility in response to a complaint. During the inspection, violations of the following sections of West Virginia State Code and the WV/NPDES permit were observed and documented:

- a. Appendix B.I.1. – Loudin failed to properly operate and maintain all activities and installed BMPs, including the interceptor ditch and a diversion in the eastern portion of the project.
- b. Section I.B. – Loudin failed to comply with the SWPPP. Several erosion control devices were not in place as detailed by the SWPPP, including a sediment trap, clean water diversion, and filter sock.
- c. Section II.F. – Loudin failed to properly implement controls, including an interceptor ditch and diversion outlet protection.
- d. Section II.H.3.b.9. – Loudin failed to protect fill slopes in the southern and western portions of the project.
- e. Section I.G. – Loudin failed to prevent sediment-laden water from leaving the site without going through an appropriate device due to failure to install necessary BMPs and failure to properly operate/maintain installed BMPs.
- f. 22-11-1 et seq. – Loudin failed to comply with the terms and conditions of Order No. 10314.
  - i. Loudin failed to comply with Order For Compliance Item No Five (5) by failing to install/maintain adequate controls and by failing to temporarily mulch all disturbed areas.
  - ii. Loudin failed to comply with Order For Compliance Item No. Two (2) by failing to cease and desist further land development activity. The foundations of two structures in the northern portion of the project had been backfilled since the previous inspection, and evidence of additional disturbance around the foundations was observed, without the cease and desist provision having been lifted.

As a result of the aforementioned violations, NOV No. W25-49-025-TJC was issued to Loudin.

13. On July 17, 2025, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia State Code and the WV/NPDES permit were observed and documented:
- a. Appendix B.I.1. – Loudin failed to properly operate and maintain all activities and installed BMPs, including a diversion and filter sock.
  - b. Section I.B. – Loudin failed to comply with the SWPPP. Several erosion control devices were not in place as detailed by the SWPPP, including a sediment trap and clean water diversion.
  - c. Section II.F. – Loudin failed to properly implement controls, including an interceptor ditch, filter sock, and diversion outlet protection.
  - d. Section II.H.3.b.9. – Loudin failed to protect fill slopes in the southern and western portions of the project.
  - e. 22-11-1 et seq. – Loudin failed to comply with the terms and conditions of Order No. 10314.
    - i. Loudin failed to comply with Order For Compliance Item No Five (5) by failing to install/maintain adequate controls and by failing to temporarily mulch all disturbed areas.
    - ii. Loudin failed to comply with Order For Compliance Item No. Two (2) by failing to cease and desist further land development activity. The foundations of two structures in the northern portion of the project had been backfilled since the previous inspection. There was additional disturbance downslope of structure number 2 for the installation of a septic tank, without the cease and desist provision having been lifted.

As a result of the aforementioned violations, NOV No. W25-49-030-TJC was issued to Loudin.

14. On October 30, 2025, WVDEP personnel and representatives of Loudin met to discuss the terms and conditions of this Order.
15. On November 5, 2025 and December 10, 2025, Loudin submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Loudin's ability to pay a civil administrative penalty.

### **ORDER FOR COMPLIANCE**

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

1. Loudin shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of Loudin's violations, Loudin shall be assessed a civil administrative penalty of ten thousand dollars (\$10,000) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule: Eight hundred thirty-three dollars and thirty-

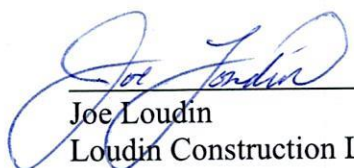
three cents (\$833.33) shall be submitted within thirty (30) days after the effective date of this Order and by the first day of each month thereafter for the next ten (10) months. Eight hundred thirty-three dollars and thirty-seven cents (\$833.37) shall be submitted by the first day of the final month. 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  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

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

  
\_\_\_\_\_  
Joe Loudin  
Loudin Construction LLC and/or  
Loudin and Sons Properties LLC

1/5/2026  
\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeremy W. Bandy, Director  
Division of Water and Waste Management

\_\_\_\_\_  
Date

## LOUDIN PHOTO LOG



View of the roadway that leads to the pad.



Overview of the area of disturbance which is well over one (1) acre.

## LOUDIN PHOTO LOG



Erosion and sediment controls were not installed at the time of inspection.



Sediment was discharging beyond the property boundary toward US Route 33.

## LOUDIN PHOTO LOG



Another view of the disturbance which is well over one (1) acre in size.



A small ephemeral stream (UNT of Sand Run) that was dozed over leaving sediment deposits within the stream channel.

## LOUDIN PHOTO LOG



Overview of the length of the access road leading to the project.



Google Maps aerial photograph that shows the disturbance (center of photograph) associated with this complaint inspection/investigation.

## LOUDIN PHOTO LOG



View of the entrance and access road associated with the project.



Front side of the project that drains toward a UNT of Childers Run.

## LOUDIN PHOTO LOG



Erosion rills that formed due to a lack of stabilization.



The erosion rills shown in the previous photograph have resulted in large amounts of sediment being carried off-site.

## LOUDIN PHOTO LOG



Example of sediment deposits at a low spot on the eastern side of the project. This sediment trail leads to an ephemeral stream (UNT of Sand Run).



Sediment deposits in ephemeral stream UNT of Sand Run.

## LOUDIN PHOTO LOG



The fill slopes for the pad were eroding away.



The erosion from photo 8 was causing sediment to discharge at a low spot on the south side of the project.

## LOUDIN PHOTO LOG



Sediment that was deposited beyond the fence line shown in the previous photograph.



Overview of the entrance to the project.

## LOUDIN PHOTO LOG



View of an area that was cleared and surveyed.



Erosion rills on the eastern side of the project continue to worsen, causing sediment to discharge into ephemeral UNT of Sand Run.

## LOUDIN PHOTO LOG



Another photograph of the erosion rills discharging sediment downstream on the eastern side of the project.



The erosion rills on the fill slope of the pad continue to worsen.

## LOUDIN PHOTO LOG



The sediment from the eroded fill slope is discharging across the fence line towards US Route 33.



Concrete washout that had discharged directly onto the ground.

## LOUDIN PHOTO LOG



Concrete washout that was discharged directly onto the ground was observed to have flowed downslope.



Concrete washout observed further downslope and off the main project area. Flow of washout was leading toward US Route 33.

## LOUDIN PHOTO LOG



Concrete washout discharge beyond the property boundary.



Photograph showing a house under construction.

## LOUDIN PHOTO LOG



Overview of the area of disturbance on the eastern side of the project where sediment is discharging into ephemeral UNT of Sand Run.



Overview of the constructed pad.

## LOUDIN PHOTO LOG



Overview of disturbance in the area of the complaint. Sediment laden water discharges with no BMPs in place.



Overview of disturbance in the area of the complaint. Sediment laden water discharges with no BMPs in place.

## LOUDIN PHOTO LOG



Evidence of sediment discharges into a conveyance that leads to UNT Sand Run.



Evidence of sediment discharges into a conveyance that leads to UNT Sand Run.

## LOUDIN PHOTO LOG



Failure to implement temporary stabilization on the western portion of the site.



Failure to implement temporary stabilization on the eastern portion of the site.

## LOUDIN PHOTO LOG



Sediment and sediment laden water discharging off the unpermitted site.



Sediment and sediment laden water discharging off the unpermitted site due to lack of maintenance.

## LOUDIN PHOTO LOG



Sediment and sediment laden water discharging toward the existing culvert that discharges into the UNT of Sand Run.



No E&S controls in place on the western portion of the site.

## LOUDIN PHOTO LOG



Recently disturbed area that lacks mulch, in violation of Order 10314.



Overview of disturbances that have occurred since the previous inspection, in violation of Order 10314.

## LOUDIN PHOTO LOG



Backfilling of foundations and changes to the adjacent stockpiles, in violation of Order 10314.



Perimeter control in the eastern portion of the project where sediment laden water bypassed due to the lack of maintenance.

## LOUDIN PHOTO LOG



Excavation activity since the previous inspection, in violation of Order 10314.



Excavation activity since the previous inspection, in violation of Order 10314.

## LOUDIN PHOTO LOG



Disturbed area that lacks seed and mulch, in violation of Order 10314.



Fill slope erosion, unmaintained BMPs, and sediment laden water bypass in the western portion of the project.

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:** Loudin Construction LLC and/or  
Loudin and Sons Properties 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#                       |                           |                           |               |               |               |          |          |    |    |    |    |
|----|--|---------------------|----------------------------|---------------------------|---------------------------|---------------|---------------|---------------|----------|----------|----|----|----|----|
|    |  |                     | 2a, 3a, 4a, 5a, 6a, 8b, 9b | 8a, 9ai, 11ei, 12fi, 13ei | 9aii, 11eii, 12fii, 13eii | 11a, 12a, 13a | 11b, 12b, 13b | 11c, 12d, 13d | 11d, 12e | 12c, 13c |    |    |    |    |
| a) | Amount of Pollutant Released             | 1 to 3              | 1                          | 1                         | 1                         | 1             | 1             | 1             | 1        | 1        |    |    |    |    |
| b) | Toxicity of Pollutant                    | 0 to 3              | 1                          | 1                         | 1                         | 1             | 1             | 1             | 1        | 1        |    |    |    |    |
| c) | Sensitivity of the Environment           | 0 to 3              | 1                          | 1                         | 1                         | 1             | 1             | 1             | 1        | 1        |    |    |    |    |
| d) | Length of Time                           | 1 to 3              | 3                          | 3                         | 3                         | 3             | 3             | 3             | 2        | 2        |    |    |    |    |
| e) | Actual Exposure and Effects thereon      | 0 to 3              | 1                          | 1                         | 1                         | 1             | 1             | 1             | 1        | 1        |    |    |    |    |
|    | <b>Average Potential for Harm Factor</b> |                     | 1.4                        | 1.4                       | 1.4                       | 1.4           | 1.4           | 1.4           | 1.2      | 1.2      | No | No | No | No |
| 2) | <b>Extent of Deviation Factor</b>        | <b>Factor Range</b> |                            |                           |                           |               |               |               |          |          |    |    |    |    |
|    | Degree of Non-Compliance                 | 1 to 3              | 3                          | 3                         | 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.

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

[illegible]

|  |                 | Extent of Deviation from Requirement |                    |                    |
|--|-----------------|--------------------------------------|--------------------|--------------------|
|  |                 | Major                                | Moderate           | Minor              |
| <b>Potential for Harm to Human Health or the Environment</b> | <b>Major</b>    | \$8,000 to \$10,000                  | \$6,000 to \$8,000 | \$5,000 to \$6,000 |
|  | <b>Moderate</b> | \$4,000 to \$5,000                   | \$3,000 to \$4,000 | \$2,000 to \$3,000 |
|  | <b>Minor</b>    | \$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, 3a, 4a, 5a, 6a, 8b, 9b | Moderate           | Major               | \$4,400 | 1               | \$4,400         |
| 8a, 9ai, 11ei, 12fi, 13ei  | Moderate           | Major               | \$4,400 | 1               | \$4,400         |
| 9aai, 11eii, 12fii, 13eii  | Moderate           | Major               | \$4,400 | 1               | \$4,400         |
| 11a, 12a, 13a              | Moderate           | Major               | \$4,400 | 1               | \$4,400         |
| 11b, 12b 13b               | Moderate           | Major               | \$4,400 | 1               | \$4,400         |
| 11c, 12d, 13d              | Moderate           | Major               | \$4,400 | 1               | \$4,400         |
| 11d, 12e                   | Moderate           | Major               | \$4,200 | 1               | \$4,200         |
| 12c, 13c                   | Moderate           | Major               | \$4,200 | 1               | \$4,200         |
| 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             |
| <b>Total Base Penalty</b>  |                    |                     |         |                 | <b>\$34,800</b> |

## **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)

| <b>Penalty Adjustment Factor</b>   | <b>% Increase</b> | <b>% Decrease</b> | <b>Base Penalty Adjustments</b> |
|--|-------------------|-------------------|---------------------------------|
| 6.2.b.1 - Willfulness and/or negligence -                                  | 10                |                   | \$3,480                         |
| 6.2.b.4 - Compliance/noncompliance history -                               | 25                |                   | \$8,700                         |
| 6.2.b.6 - Economic benefits -<br>(flat monetary increase)                  |                   |                   | \$0                             |
| 6.2.b.7 - Public Interest -<br>(flat monetary increase)                    |                   |                   | \$0                             |
| 6.2.b.8 - Loss of enjoyment -<br>(flat monetary increase)                  |                   |                   | \$0                             |
| 6.2.b.9 - Investigative costs -<br>(flat monetary increase)                |                   |                   | \$0                             |
| 6.2.b.10 - Other factors (size of violator)                                |                   |                   | \$0                             |
| 6.2.b.10 - Additional Other Factors -<br>Increase (flat monetary increase) |                   |                   | \$0                             |
| 6.2.b.10 - Additional Other Factors -<br>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                | (\$3,480)                       |
| 6.2.b.5 - Ability to Pay   |                   | 96.35             | (\$33,530)                      |
| <b>Penalty Adjustments</b>   |                   |                   | <b>(\$24,800)</b>               |
| <b>Penalty =</b>   |                   |                   | <b>\$10,000</b>                 |

| <b>Estimated Economic Benefit Item</b>                             | <b>Estimated Benefit (\$)</b> |
|--|-------------------------------|
| 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  |                               |
| <b>Estimated Economic Benefit</b>                                  | <b>\$0</b>                    |
| <b>Comments:</b> Economic benefit not warranted.                   |                               |