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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: Debra Nesselrodt, Treasurer
South Fork Crossing Homeowner's Association Inc.
PO Box 32
Brandywine, WV 26802

DATE: November 2, 2021

ORDER NO.: 9878

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 South Fork Crossing Homeowner's Association Inc. (hereinafter "S. Fork Crossing HOA").

FINDINGS OF FACT

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

1. S. Fork Crossing HOA operates a wastewater treatment facility located near Brandywine, Pendleton County, West Virginia. S. Fork Crossing HOA was re-issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG551394, on February 13, 2018.
2. On June 26, 2018, November 13, 2018, and April 9, 2019, West Virginia Department of Environmental Protection (WVDEP) personnel conducted inspections of the facility. During the inspections, violations of the following section of the WV/NPDES permit were observed and documented:
 - a. Section B.1- S. Fork Crossing HOA failed to submit Discharge Monitoring Reports (DMRs).

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W18-36-090-CCS, W18-36-143-CCS, and W19-36-049-CCS were issued to S. Fork Crossing HOA.

Promoting a healthy environment.

3. On August 20, 2019 WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed and documented vegetation in the sand filter beds, which is a continuing deficiency that was previously note during the aforementioned June 26, 2018 and November 13, 2018 inspections.
4. On December 2, 2019, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed and documented accumulated leaves in the sand filter beds.
5. On January 16, 2020, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following section of the WV/NPDES permit were observed and documented:
 - a. Section B.2 - S. Fork Crossing HOA failed to collect and analyze a representative sample of the facility effluent for the regulated pollutant parameters during the monitoring periods.

As a result of the aforementioned violations, NOV No. W20-36-006-CCS was issued to S. Fork Crossing HOA.

6. On April 15, 2020, WVDEP personnel conducted a review of facility records from the time period of January 1, 2018 through December 31, 2019. During this time period, the following violations of S. Fork Crossing HOA's WV/NPDES permit were documented:
 - a. Section B.1 – S. Fork Crossing HOA failed to submit DMRs for the following three (3) sampling periods: 1st Quarter 2018, 2nd Quarter 2018, and 3rd Quarter 2018.
 - b. Section B.2 – S. Fork Crossing HOA failed to collect and analyze a representative sample of the facility effluent for the regulated pollutant parameters during the following five (5) sampling periods: 4th Quarter 2018, 1st Quarter 2019, 2nd Quarter 2019, 3rd Quarter 2019, and 4th Quarter 2019. Specifically, these DMRs were submitted as “No Flow.” However, discharge from Outlet No. 001 was observed and documented by WVDEP personnel during inspections conducted on June 26, 2018; November 13, 2018; April 9, 2019; December 2, 2019; and January 16, 2020. Therefore, reporting five (5) consecutive quarters as “No Flow” is not representative of the actual effluent from Outlet No. 001.
7. On April 6, 2021, WVDEP personnel and representatives of S. Fork Crossing HOA met to discuss the terms and conditions of this Order.
8. On April 17, 2021, S. Fork Crossing HOA submitted a proposed Plan of Corrective Action (POCA). The POCA included action items and completion dates for how and when S. Fork Crossing HOA would achieve compliance with all terms and conditions of the WV/NPDES permit. The POCA was subsequently approved by WVDEP.
9. On July 19 and October 27, 2021, S. Fork Crossing HOA submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated S. Fork Crossing HOA'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., it is hereby agreed between the parties, and ORDERED by the Director:

1. S. Fork Crossing HOA 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, dated April 17, 2021, 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. Within thirty (30) days of the effective date of this Order, S. Fork Crossing HOA shall submit an approvable financial plan demonstrating that S. Fork Crossing HOA will obtain the funds needed to properly operate and maintain the wastewater treatment facility, in accordance with all pertinent laws and rules. The financial plan shall include details regarding the HOA's fee assessments and fee payment schedule and shall illustrate that S. Fork Crossing HOA will collect funds necessary for proper completion of all action items described in the aforementioned April 17, 2021 approved POCA.
4. Because of S. Fork Crossing HOA's permit violations, S. Fork Crossing HOA shall be assessed a civil administrative penalty of two thousand five hundred dollars (\$2,500) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following twenty-four (24) month payment schedule: One hundred four dollars and sixteen cents (\$104.16) 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 twenty-two (22) months. One hundred four dollars and thirty-two cents (\$104.32) 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.

Payments and required documents 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. S. Fork Crossing HOA hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, S. Fork Crossing HOA 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, S. Fork Crossing HOA 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 S. Fork Crossing HOA 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, S. Fork Crossing HOA 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 S. Fork Crossing HOA becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and S. Fork Crossing HOA 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 S. Fork Crossing HOA 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 S. Fork Crossing HOA (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 S. Fork Crossing HOA 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 S. Fork Crossing HOA 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 S. Fork Crossing HOA, its successors and assigns.

7. This Order shall terminate upon S. Fork Crossing HOA's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Debra Nesselrodt

Debra Nesselrodt, Treasurer
South Fork Crossing Homeowner's Association Inc.

12/27/21

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date



6/26/18- Sand filters with overgrown vegetation



6/26/18- Effluent at Outlet 001



11/13/18- South Fork Crossing Outlet 001



11/13/18- Effluent at Outlet 001



11/13/18- Sand filters with vegetation



4/09/19- Outlet 001 and the South Fork River



8/20/19- Vegetation on sand filter beds.



12/02/19- Wastewater entering the sand filters



12/02/19- Effluent at Outlet 001



12/02/19- Leaves in the sand filter beds.



1/16/20- Effluent at Outlet 001



1/16/20- Wastewater entering the sand filters

SOUTHFORK CROSSING HOA

PO BOX 32

BRANDYWINE WV 26802

CORRECTIVE ACTION PLAN

APRIL 17TH 2021

FINDINGS OF FACTS WHICH MUST BE CORRECTED FROM INSPECTIONS CONDUCTED AT THE FACILITY. IN VIOLATION OF THE FOLLOWING:

- 1)FAILURE TO SUBMIT DMRS**
- 2)VEGETATION IN SAND FILTER BEDS**
- 3)ACCUMULATING LEAVES IN SAND FILTER BEDS**
- 4)FAILURE TO COLLECT AND ANALYZE FOR QUARTERLY SAMPLES**
- 5)NO ACCESS TO CHAMBER INSIDE FACILITY**

SOUTHFORK CROSSING HOA HAS MET AND THIS IS THE HOA'S CORRECTIVE PLAN.

- 1) OPERATOR (JAMES PROPST) OF FACILITY STATED HE WAS LOCKED OUT OF THE SITE TO SUBMIT DMRS HE SAID HE WILL CONTACT DEP FOR SOMEONE TO HELP HIM WITH THE SITE. DEBBIE WILL FOLLOW UP WITH THIS.**
- 2) ON APRIL 12TH AND 13TH 2021 VEGETATION AND LEAVES AND CLEAN UP WORK DONE TO FACILITY (PICTURES ENCLOSED) WORK DETAIL TO BE DONE EVERY WEEK TO ENSURE PLANT IS OPERATING PROPERLY. PICTURES CAN BE TAKEN AND SENT VIA**

EMAIL OR TEXT TO FACILITY INSPECTOR ON MONTHLY BASES OR HOWEVER HE (CHAD SWICK) REQUEST.

- 3) COLLECTING OF WATER SAMPLES TO BE DRAWN BY FACILITY OPERATOR (TOMMY BODKIN) BY 7:30AM ON 1ST THURSDAY OF EACH NEW QUARTER FOR TRANSPORT TO ELKINS. ON THURSDAY 04/15/2021 WATER SAMPLE WAS DRAWN AND TAKEN TO ELKINS BY (TERRY NESSELRODT) DMRs WILL BE ENTERED WHEN WE RECEIVE THEM.
- 4) ACCESS TO FACILITY AND CHAMBER LOCKS WERE CHANGED ON 04/15/2021 HAVE NEW KEYS FOR FACILITY INSPECTOR (CHAD SWICK) I (DEBBIE NESSELRODT) WILL CONTACT HIM ON GETTING HIM NEW KEYS TO FACILITY.
- 5) PERMIT MUST BE RENEWED BY SEPTEMBER 2021 I (DEBBIE NESSELRODT) WILL ASSURE YOU THIS WILL BE DONE BY NO LATER THAN JULY 1ST 2021

SOUTHFORK CROSSING HOA AGREES TO THIS CORRECTIVE ACTION PLAN AND FROM THIS POINT FORWARDED AGREES TO REMAIN IN COMPLIANCE WITH THE DEP AND PERMIT #WV0103110

WE ARE A LOW INCOME HOUSING DEVELOPMENT (HOA) AND ASK THAT THE DEP PLEASE WORK WITH US ON THIS MATTER.

THANKS IN ADVANCE,

DEBBIE NESSELRODT (TREASURER) DEBNESSELRODT72@GMAIL.COM 304-902-0120

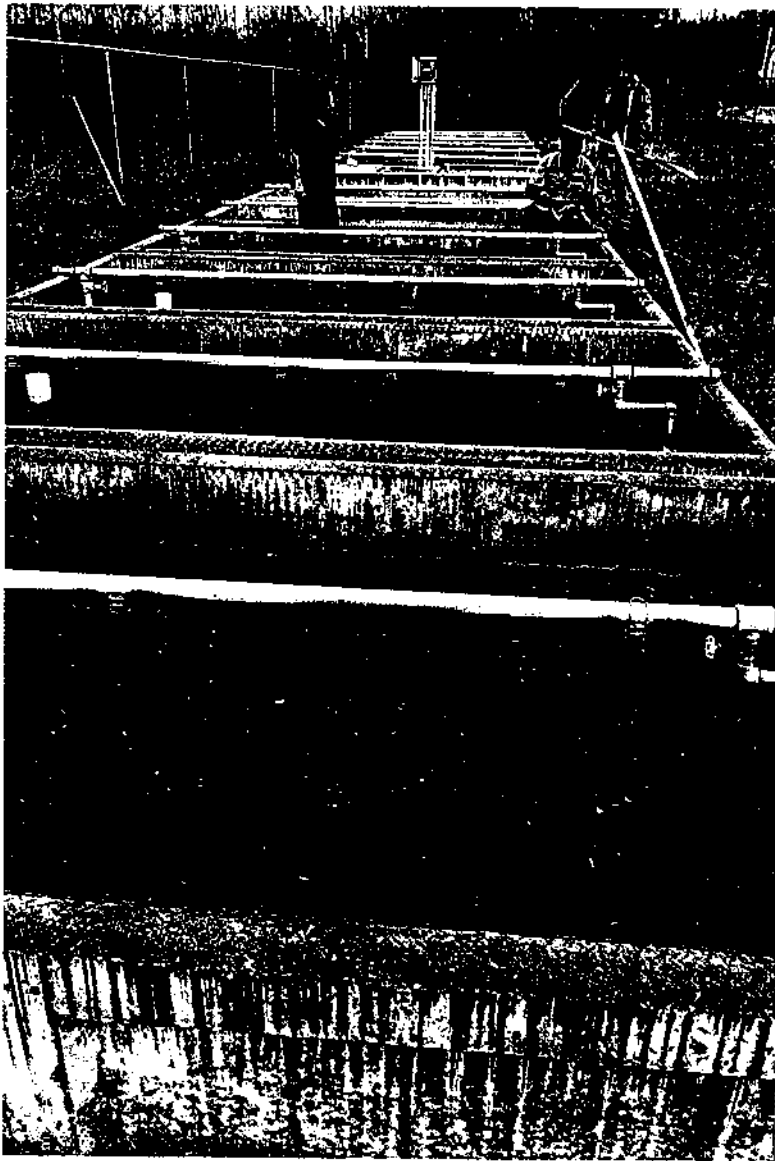
JAMES PROPST (FACILITY OPERATOR)

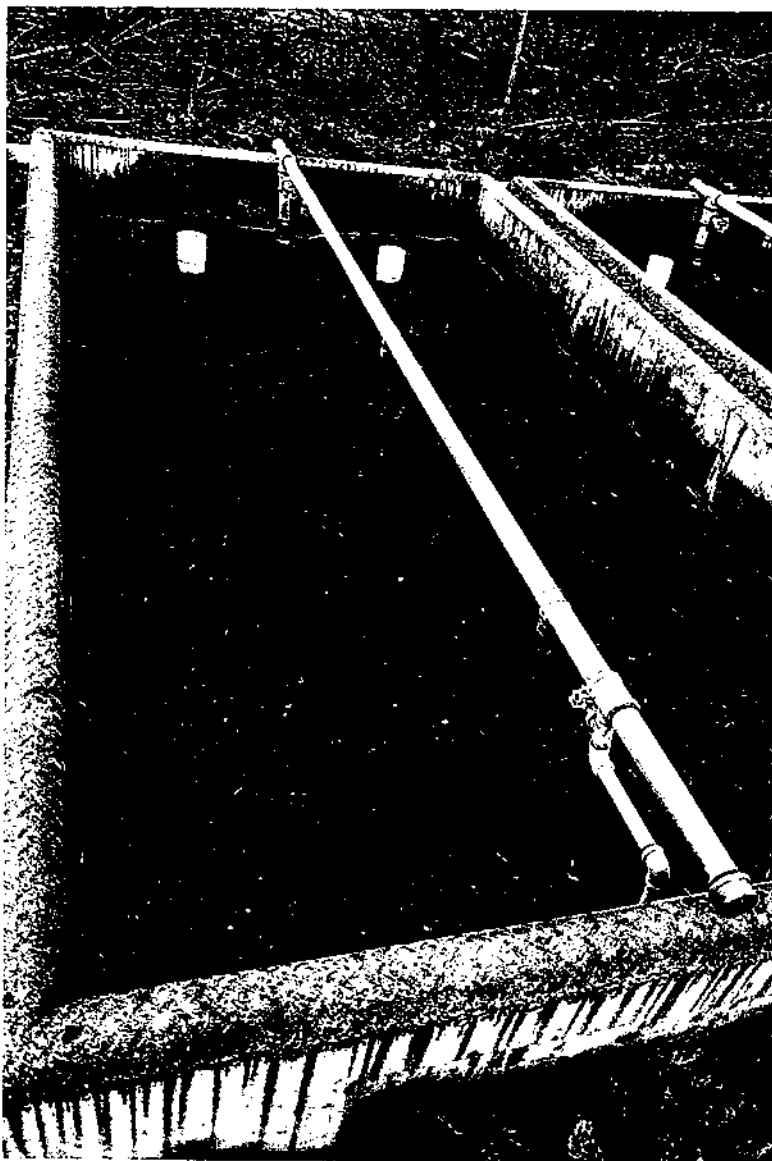
TOMMY BODKIN (FACILITY OPERATOR)

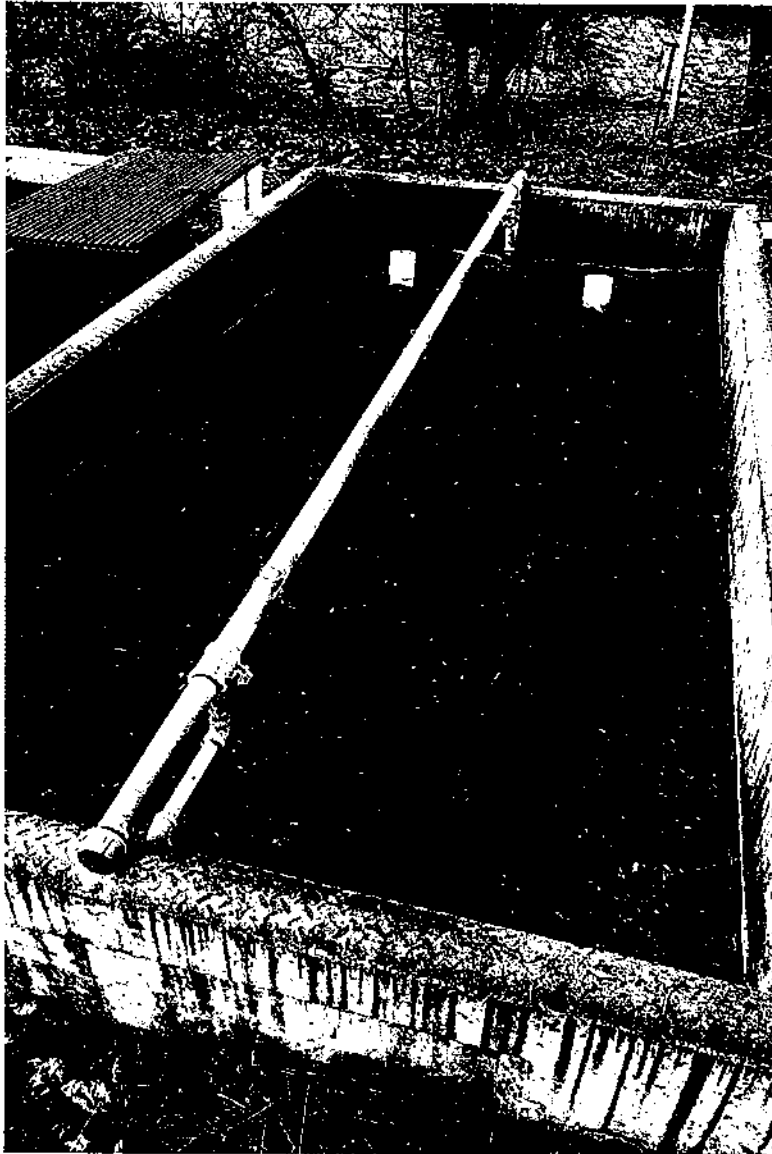
Debbie Nesselrodt 4/17/21

James E. Propst 4/17/21

Tommy Bodkin 4-17-21











Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: South Fork Crossing Homeowner's Association Inc. **Receiving Stream:** South Fork

Treatment System Design Maximum Flow: 0.00336 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#											
			6a	6b										
a)	Amount of Pollutant Released	1 to 3	1	1										
b)	Toxicity of Pollutant	0 to 3	0	0										
c)	Sensitivity of the Environment	0 to 3	0	0										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	0	0										
Average Potential for Harm Factor			0.4	0.4	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										

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.

		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
6a	Minor	Major	\$1,700	3	\$5,100
6b	Minor	Major	\$1,700	5	\$8,500
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
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					\$13,600

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		\$1,360
6.2.b.4 - Compliance/noncompliance history -			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,600		\$1,600
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	(\$1,360)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,360)
6.2.b.5 - Ability to Pay		83.6	(\$11,370)
Penalty Adjustments			(\$11,100)
Penalty =			\$2,500

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$1,600
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	\$1,600
Comments: Avoided cost of sampling/submitting eight quarters of DMRs.	