



west virginia department of environmental protection

Division of Water and Waste Management
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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: CZS Development, LLC.
ATTN: Dan Shearer
90 Chateau Royale Ct.
Morgantown, WV 26508

DATE: March 11, 2015

ORDER NO.: 8188

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 CZS Development, LLC.

FINDINGS OF FACT

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

1. CZS Development, LLC. is conducting land disturbance activity near Pierpont, Monongalia County, West Virginia. CZS Development, LLC. was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR103340, on September 17, 2007. The WV/NPDES permit was reissued on October 9, 2013.
2. On October 10, 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 Legislative Rules and CZS Development, LLC.'s WV/NPDES permit were observed and documented:
 - a. 47CSR2 Section 3.2.a-CZS Development, LLC. caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the stream channel. Deposits and sediment-laden water were observed in the drainage immediately below Pond One (1). Sediment deposits were observed in the unnamed

- tributary of West Run, along CR66, below the job site where the drainage from Pond One (1) enters the receiving stream.
- b. D.1-CZS Development, LLC. failed to at all times properly operate and maintain all facilities and systems of treatment and control. Pond One (1) had a "Stormwater Detention Riser" pipe with four 6", four 10", and four 8" orifices instead of a "Sediment Riser" pipe with a single 2" orifice, even though the entire area it drains is disturbed. The Stormwater Detention Riser pipe allowed excess velocity, sediment deposits, and sediment-laden water to enter an unnamed tributary of West Run.
 - c. G.4.e.2.A.i-CZS Development, LLC. failed to initiate stabilization measures, such as seed and mulch, on portions of the site where construction activities temporarily or permanently ceased for greater than seven (>7) days and would not resume within twenty-one (21) days.
 - d. G.4.e.2.A.i.c-CZS Development, LLC. failed to 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.
 - e. G.4.e.2.A.ii.c-CZS Development, LLC. failed to protect the inlet(s) and outlet(s) of sediment trapping structures against erosion with appropriate material such as riprap or other similar media.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-NW-TWH-101012 and W-NW-TWH-101012-003 and three (3) Warnings were issued to CZS Development, LLC.

3. On February 28, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and CZS Development, LLC.'s WV/NPDES permit were observed and documented:
 - a. 47CSR2 Section 3.2.f-CZS Development, LLC. caused conditions not allowable in waters of the State by creating a distinctly visible plume in the receiving stream. An unstabilized inlet was short circuiting Pond One (1) allowing sediment-laden water to enter the receiving stream.
 - b. G.4.e.2.A.ii.c.-CZS Development, LLC. failed to protect the inlet(s) and outlet(s) of sediment trapping structures against erosion with appropriate material such as riprap or other similar media.

As a result of the aforementioned violations, NOV No. W-NW-TWH-032813 and one (1) Warning were issued to CZS Development, LLC.

4. On April 11, 2013, Scott A. Hans, United States Army Corps of Engineers Regulatory Branch Chief, issued a correspondence to Steve Solomon of CZS Development, LLC. The correspondence referred to unlawful fill material being placed within the aforementioned Unnamed Tributary of West Run. The letter stated that failure to cease and desist further work at the aforementioned location after receipt of the Order could result in a referral to the United States Environmental Protection Agency or United States Attorney for enforcement or prosecution.

5. On July 15, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and CZS Development, LLC.'s WV/NPDES permit were observed and documented:
 - a. 47CSR2 Section 3.2.b-CZS Development, LLC. caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the receiving stream immediately downstream of the area where Pond One (1) was prematurely removed. In addition, a distinctly visible plume was observed in the unnamed tributary of West Run, along CR66, below the site. About one thousand feet (1,000') of the receiving stream immediately downstream of the area where Pond One (1) was removed was filled with two to three feet (2-3') of sediment.
 - b. B-CZS Development, LLC. failed to comply with the approved Stormwater Pollution Prevention Plan (SWPPP). Sediment and erosion control devices were not in place or maintained as detailed in the approved SWPPP. Most significantly, the premature removal of Pond One (1) allowed large amounts of sediment originating from the site to be deposited in the receiving stream.
 - c. G.4.a-CZS Development, LLC. failed to maintain the SWPPP on site. No plans were available during the inspection.
 - d. C.15-CZS Development, LLC. failed to maintain outlet markers at the discharge points from the site.
 - e. G.4.b.8-CZS Development, LLC. failed to display an entrance sign for the duration of the project.
 - f. G.4.e.2.A.i-CZS Development, LLC. 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.
 - g. G.4.e.2.A.i.c-CZS Development, LLC. failed to 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.
 - h. G.4.e.2.A.ii.f-CZS Development, LLC. failed to provide adequate fill slope protection. Fill slopes on the face of multiple building pads did not have properly maintained berms directing water to stabilized channels, had ponding stormwater directed over the face of the slopes, and contained significant erosion gulleys.
 - i. G.4.e.2.A.ii.j- CZS Development, LLC. allowed sediment-laden water to leave the site without going through an appropriate best management practice (BMP). Sediment-laden water was directly discharging to the receiving stream from the major site drainage that used to be discharged through Pond One (1) prior to its removal.
 - j. G.4.e.2.C.i-CZS Development, LLC. failed to dispose of all solid waste and construction/demolition material in accordance with WV Legislative Rule 33CSR1. Quickcrete bags, buckets, insulative foam, and other construction/demolition debris were disposed of in the staged topsoil/fill material.
 - k. G.4.e.2.D-CZS Development, LLC. failed to develop a maintenance plan which provides that all erosion and sediment controls on the site are 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. Inspection records were not available during the inspection.
 - l. D.1-CZS Development, LLC. failed to at all times properly operate and maintain all facilities and systems of treatment and control.

As a result of the aforementioned violations, NOV Nos. W-NW-TWH-071514-001, W-NW-TWH-071514-002, W-NW-TWH-071514-003, and ten (10) Warnings were issued to CZS Development, LLC.

6. On August 1, 2014, WVDEP issued Order No. 8133 to CZS Development, LLC. in response to the aforementioned violations. The Order required CZS Development, LLC. to:
 - a. Immediately cease and desist land development activity until all erosion and sediment control devices are 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 into waters of the State.
 - c. Within ten (10) days of the effective date of the Order, modify the WV/NPDES permit and SWPPP to include engineered drawings reflecting current site conditions and all planned future development.
 - d. Within thirty (30) 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 CZS Development, LLC. will achieve compliance with all pertinent laws and rules.

7. On February 27, 2015, WVDEP personnel and representatives of CZS Development, LLC. 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. CZS Development, LLC. shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.

2. Because of CZS Development, LLC.'s Legislative Rule and permit violations, CZS Development, LLC. shall be assessed a civil administrative penalty of forty-three thousand four hundred eighty dollars (\$43,480) 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. CZS Development, LLC. 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, CZS Development, LLC. 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, CZS Development, LLC. 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 CZS Development, LLC. 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, CZS Development, LLC. 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 CZS Development, LLC. becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and CZS Development, LLC. 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 CZS Development, LLC. 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 CZS Development, LLC. (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 CZS Development, LLC. 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 CZS Development, LLC. 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 CZS Development, LLC., its successors and assigns.

7. This Order shall terminate upon CZS Development, LLC.'s notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Dan Shearer
Dan Shearer
CZS Development, LLC.

3/17/15
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED

MAR 17 2015

ENVIRONMENTAL
ENFORCEMENT



P7150940

Solid waste mixed in with staged topsoil/fill material



P7150942

Solid waste mixed in with staged topsoil/fill material



P7150944

Solid waste mixed in with staged topsoil/fill material



P7150947

Large areas of bare soil left unstabilized for >14 days with signs of erosion



P7150950

Large areas of bare soil left unstabilized for >14 days with signs of erosion



P7150952

Large areas of bare soil left unstabilized for >14 days with signs of erosion



P7150960

Ponding stormwater on a building pad being diverted over the face of an unprotected fill slope



P7150964

Ponding stormwater on a building pad being diverted over the face of an unprotected fill slope



P7150965

Ponding stormwater on a building pad being diverted over the face of an unprotected fill slope



P7150966

Ponding stormwater on a building pad being diverted over the face of an unprotected fill slope



P71550953

State waters passing through site via unstabilized channels eroding toward the receiving stream



P7150954

State waters passing through site via unstabilized channels eroding toward the receiving stream



P7150958

State waters passing through site via unstabilized channels eroding toward the receiving stream



P7150958

State waters passing through site via unstabilized channels eroding toward the receiving stream



P7150968

State waters passing through site via unstabilized channels eroding toward the receiving stream



P7150970

State waters passing through site via unstabilized channels eroding toward the receiving stream



PA101392

Photo from previous inspection showing Pond 1 installed prior to discharge to the stream



P7150974

Current photo showing location of Pond 1 removal resulting in direct discharge to stream



PA101397

Photo from previous inspection showing Pond 1's discharge to the receiving stream



P7150976

Current photo after Pond 1 removal showing direct discharge to the receiving stream



PA101400

Photo from previous inspection showing stream channel prior to Pond 1 removal



P7150981

Current photo showing stream channel sediment deposits after Pond 1's premature removal



PA101401

Photo from previous inspection showing stream channel prior to Pond 1 removal



P7150985

Current photo showing stream channel sediment deposits after Pond 1's premature removal



P7150986

Current photo showing stream channel sediment deposits after Pond 1's premature removal



P7150987

Current photo showing stream channel sediment deposits after Pond 1's premature removal



P7151001

Current photo showing stream channel sediment deposits after Pond 1's premature removal



P7151004

Current photo showing sediment deposit impacted stream culverted for new site addition access



P7151006

Current state of the receiving stream immediately upslope of entering UT of West Run



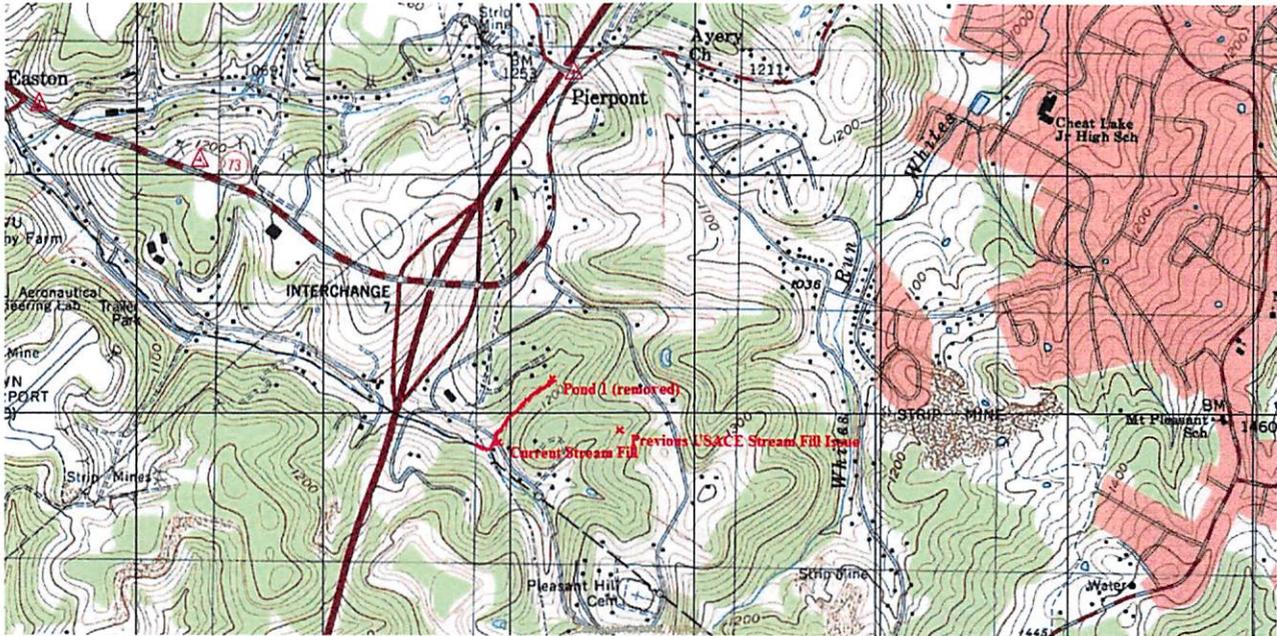
P7151009

Receiving stream from site conveying sediment-laden water toward a UT of West Run



P7151018

Receiving stream from site causing a distinctly visible plume in a UT of West Run



Screen Shot from Terrain Navigator Pro WV Edition

Area map showing location of previous USACE stream fill issues and where Pond 1 was removed causing the current stream fill issues

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

CZS Development, LLC.

Receiving Stream:

UT of West Run

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			3a	3b	5a	5b	5c	5d	5e	5f	5g	5h	5i	5j	5k
a)	Amount of Pollutant Released	1 to 3	1	1	3	1	1	1	1	1	1	1	3	1	1
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	0	0	0	1	1	1	1	0	0
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	0	0	0	1	1	1	1	1	0
d)	Length of Time	1 to 3	1	2	1	1	1	1	1	2	2	1	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	0	0	0	1	1	1	1	0	0
Average Potential for Harm Factor			1	1.2	1.4	1	0.4	0.4	0.4	1.2	1.2	1	1.4	0.6	0.4
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	3	2	1	1	1	2	2	3	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 <=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
3a	Minor	Major	\$2,000	1	\$2,000
3b	Moderate	Major	\$4,200	1	\$4,200
5a	Moderate	Major	\$4,400	1	\$4,400
5b	Minor	Moderate	\$1,500	1	\$1,500
5c	Minor	Minor	\$400	1	\$400
5d	Minor	Minor	\$400	1	\$400
5e	Minor	Minor	\$400	1	\$400
5f	Moderate	Moderate	\$3,200	1	\$3,200
5g	Moderate	Moderate	\$3,200	1	\$3,200
5h	Minor	Major	\$2,000	1	\$2,000
5i	Moderate	Major	\$4,400	1	\$4,400
5j	Minor	Minor	\$600	1	\$600
5k	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
Total Base Penalty					\$27,100

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		\$2,710
6.2.b.4 - Compliance/noncompliance history	10		\$2,710
6.2.b.6 - Economic benefits - (flat monetary increase)	\$16,350		\$16,350
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	(\$2,710)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,710)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$16,380
Penalty =			\$43,480

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	\$16,350
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$16,350
Comments: Avoided costs of seeding/mulching and installation of diversion ditches.	