



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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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: B & M Repair, Inc.
John Hainer, Owner
P.O. Box 4546
Chapmanville, WV 25601

DATE: July 20, 2015

ORDER NO.: 8111

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 B & M Repair, Inc. (hereinafter "B & M Repair").

FINDINGS OF FACT

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

1. B & M Repair operates a package plant located in Chapmanville, Logan County, West Virginia. B & M Repair was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration Number WVG550056, on September 24, 2012.
2. On June 19, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, WVDEP personnel collected effluent samples from B & M Repair's wastewater treatment plant (Outfall 001). Violations of the following sections of the terms and conditions of B & M Repair's WV/NPDES permit were observed and documented:
 - a. Section B.2-B & M Repair failed to submit Discharge Monitoring Reports for the 4th Quarter of 2012 through the 1st Quarter of 2013.
 - b. Section F.1-B & M Repair failed to properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the conditions of the permit. Specifically:

- i. The aeration basin was not being aerated.
 - ii. The clarifier had no clarity.
 - iii. The tablet feeders were in need of repair.
 - iv. The barscreen was full of debris.
 - v. The sludge return was not working.
 - c. Section A.001- Upon review of analysis of the aforementioned samples, two (2) exceedances of B & M Repair's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-one (1)
 - ii. Major violations-one (1)
 - d. Section G.2-B & M Repair failed to adequately protect the sewage treatment facility by allowing unrestricted access to the plant (i.e. the gate was not locked).

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W13-23-219-MBC, W13-23-220-MBC, W13-23-221-MBC, and W14-23-222-MBC were issued to B & M Repair.

3. On October 16, 2013, WVDEP offered compliance assistance to B & M Repair.
4. On October 30, 2013, John Hainer, owner of B & M Repair, informed WVDEP personnel that he contacted Richmorr & Associates to look at repairs to the package plant.
5. On November 14, 2013, WVDEP provided compliance assistance to B & M Repair.
6. On February 18, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of B & M Repair's WV/NPDES permit were observed and documented:
 - a. Section B.2-B & M Repair failed to submit Discharge Monitoring Reports for the 2nd Quarter of 2013 through the 4th Quarter of 2013.
 - b. Section F.1-B & M Repair failed to properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the conditions of the permit. Specifically:
 - i. The bar screen was full of debris.
 - ii. The aeration basin was not being aerated.
 - iii. The clarifier had little to no clarity.
 - iv. The sludge return was not working.
 - v. No dechlor tablets were in the tubes.

As a result of the aforementioned violations, NOV Nos. W14-23-017-CJN and W14-23-018-CJN were issued to B & M Repair.

7. On June 6, 2014, WVDEP personnel conducted a review of facility records. During the review, a violation of the following section of the terms and conditions of B & M Repair's WV/NPDES permit was observed and documented:
 - a. Section B.2-B & M Repair failed to submit Discharge Monitoring Reports for the 1st Quarter of 2014.

8. On November 13, 2014, WVDEP personnel and a representative of B & M Repair met to discuss the terms and conditions of this Order. WVDEP personnel approved B & M Repair's plan of corrective action and schedule, which outlined action items and completion dates for how and when B & M Repair achieved compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action and schedule stated that the aforementioned package plant was emptied on September 9, 2014 and properly disposed of on September 15, 2014. The plant was replaced with a septic tank and absorption field.

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:

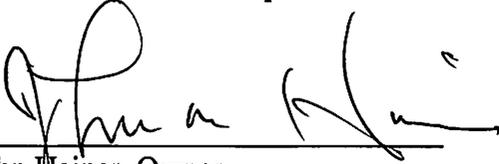
1. B & M Repair shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Because of B & M Repair's permit violations, B & M Repair shall be assessed a civil administrative penalty of three thousand six hundred seventy five dollars (\$3,675) 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. B & M Repair 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, B & M Repair 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, B & M Repair 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 B & M Repair 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, B & M Repair 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 B & M Repair becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and B & M Repair 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 B & M Repair 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 B & M Repair (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 B & M Repair 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 B & M Repair 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 B & M Repair, its successors and assigns.

7. This Order shall terminate upon B & M Repair's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



John Hainer, Owner
B & M Repair, Inc.

10-20-15
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED

OCT 23 2015

ENVIRONMENTAL
ENFORCEMENT

Photo Attachment
B & M Repair, Inc.
WVG550056

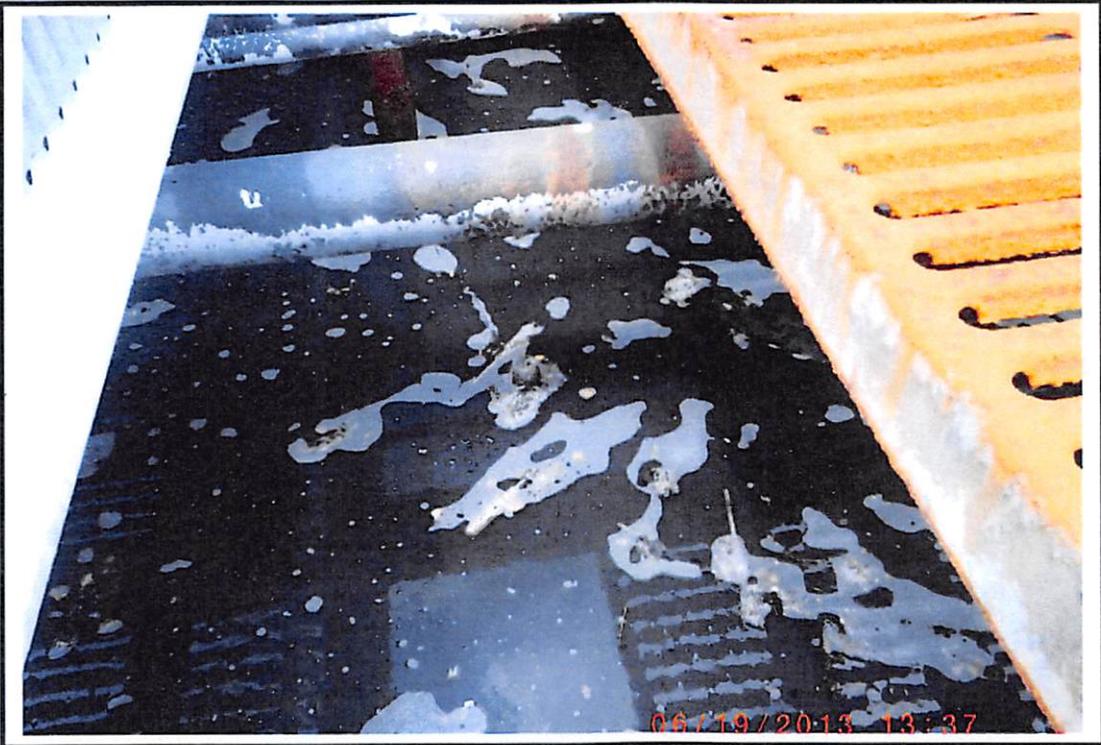


6/19/2013 – Overview of the plant



6/19/2013 – Bar screen

Photo Attachment
B & M Repair, Inc.
WVG550056



6/19/2013 –Aeration basin



6/19/2013 –Clarifier

Photo Attachment
B & M Repair, Inc.
WVG550056

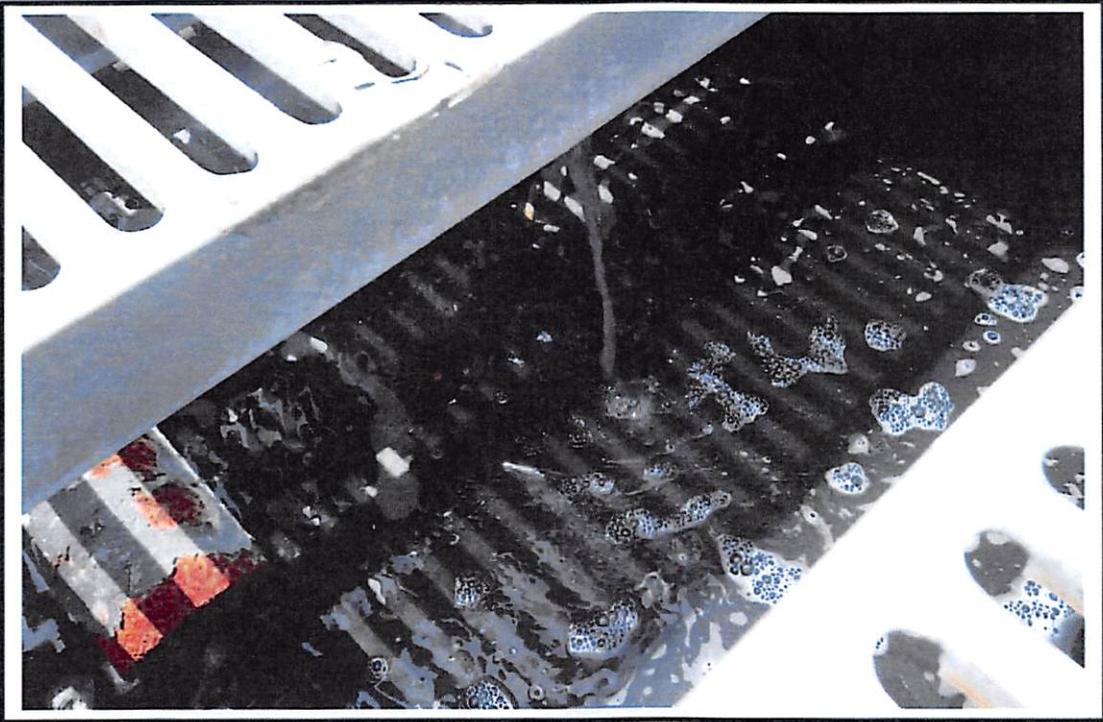


6/19/2013 –Clarifier effluent weir

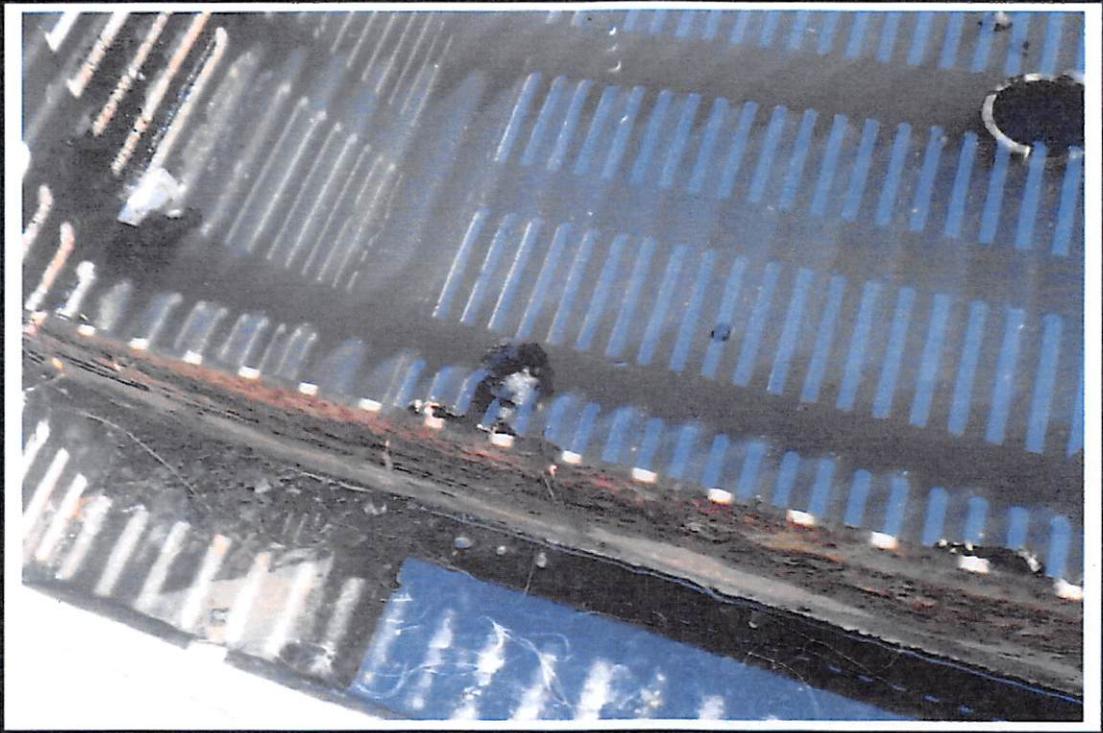


6/19/2013 –Contact chamber

Photo Attachment
B & M Repair, Inc.
WVG550056



6/19/2013 –Skimmer return



2/18/2014 –Clarifier effluent weir.

Table One: B and M Repair DMR Exceedance Summary

Outlet 001 DMR Exceedances - INSTANTANEOUS. MAX.						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
						6/19/13	BOD5	mg/L
6/19/13	Fecal Coliform	cnts/100m	500	60000	11900%	-	-	X

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	1	0	1

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

B & M Repair

Receiving Stream:

Garrett Fork/ Lower Guyandotte

Treatment System Design Maximum Flow: 0.004 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	2b	2ci	2cii	2d	6a	6b	7a					
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	0	1	1	1	1	0	1	0					
c)	Sensitivity of the Environment	0 to 3	0	1	1	1	1	0	1	0					
d)	Length of Time	1 to 3	1	1	1	1	1	1	2	1					
e)	Actual Exposure and Effects thereon	0 to 3	0	1	1	1	1	0	1	0					
Average Potential for Harm Factor			0.4	1	1	1	1	0.4	1.2	0.4	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	1	3	1	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
2a	Minor	Major	\$1,700	2	\$3,400
2b	Minor	Major	\$2,000	1	\$2,000
2ci	Minor	Minor	\$1,000	1	\$1,000
2cii	Minor	Major	\$2,000	1	\$2,000
2d	Minor	Minor	\$1,000	1	\$1,000
6a	Minor	Major	\$1,700	3	\$5,100
6b	Moderate	Major	\$4,200	1	\$4,200
7a	Minor	Major	\$1,700	1	\$1,700
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					\$20,400

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 -	0		\$0
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,200		\$1,200
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)		50	(\$10,200)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		\$3,675	(\$3,675)
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$2,040)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,040)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$16,725)
Penalty =			\$3,675

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$1,200
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	\$1,200
Comments: Avoided costs of 6 quarters of DMR sampling/reporting.	