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west virginia department of environmental protection

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Division of Water and Waste Management  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
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**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: September 11, 2015

ORDER NO.: 8429

**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 (hereinafter "CZS").

**FINDINGS OF FACT**

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

1. CZS is conducting land disturbance activity near Pierpont, Monongalia County, West Virginia. CZS 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' WV/NPDES permit were observed and documented:
  - a. 47CSR2 Section 3.2.a-CZS 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 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 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 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 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-101012-002, W-NW-TWH-101012-003, and three (3) Warnings were issued to CZS.

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' WV/NPDES permit were observed and documented:
  - a. 47CSR2 Section 3.2.f-CZS 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 failed to protect the inlet(s) and outlet(s) of sediment trapping structures against erosion with appropriate material such as riprap or other media.

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

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. 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' WV/NPDES permit were observed and documented:
  - a. 47CSR2 Section 3.2.b-CZS 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 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 deposits originating from the site to be deposited in the receiving stream.
- c. G.4.c-CZS failed to modify the SWPPP when there was a change in design, construction, scope of operation, or maintenance which had a significant effect on the potential for the discharge of pollutants to waters of the State. Specifically, the site design (i.e. sediment basin locations and stormwater drainages) was significantly different than that of the approved SWPPP.
- d. G.4.a-CZS failed to maintain the SWPPP on site. No plans were available during the inspection.
- e. C.15-CZS failed to maintain outlet markers at the discharge points from the site.
- f. G.4.b.8-CZS failed to display an entrance sign for the duration of the project.
- g. G.4.e.2.A.i-CZS 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.
- h. G.4.e.2.A.i.c-CZS failed to reseed areas where the seed has failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding and mulching.
- i. G.4.e.2.A.ii.f-CZS 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.
- j. G.4.e.2.A.ii.j-CZS 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.
- k. G.4.e.2.C.i-CZS 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.
- l. G.4.e.2.D-CZS failed to develop a maintenance plan that 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.
- m. D.1-CZS 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.

6. On August 1, 2014, WVDEP issued Order No. 8133 to CZS in response to the aforementioned violations. Specifically, the Order required CZS to:
  - a. Immediately cease and desist land development activity until all erosion and sediment control devices were 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 would achieve compliance with all pertinent laws and rules.
  - e. Contact WVDEP personnel for a follow up inspection to confirm all requirements of the Order were met prior to restarting operations.
7. On October 27, 2014, a compliance assistance meeting was held on site with WVDEP personnel, site representative Steve Solomon, and site engineer Pat Gallagher to discuss the terms and conditions of Unilateral Order No. 8133.
8. On December 8, 2014, WVDEP personnel received the Plan of Corrective Action and Schedule of Compliance, as required by Item No. Three (3) under the Order for Compliance section of Unilateral Order No. 8133.
9. On December 11, 2014, WVDEP issued correspondence communicating that the proposed Plan of Corrective Action was acceptable, approved, and incorporated as part of Unilateral Order No. 8133.
10. On May 1, 2015, WVDEP and CZS entered into Consent Order No. 8188. The Order was issued in response to the aforementioned violations.
11. On July 9, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code, WV Legislative Rule, and CZS' WV/NPDES permit were observed and documented:
  - a. 47CSR2 Section 3.2.a-CZS caused conditions not allowable in waters of the State by creating distinctly visible solids in the receiving stream. Specifically, turbid discharges resulting from Phase I and Phase II were causing a distinctly visible plume in an unnamed tributary of West Run as a result of inadequate erosion and sediment controls.
  - b. B-CZS failed to comply with the approved SWPPP. Specifically, the majority of the Phase II portion of the site was disturbed prior to the installation of Pond Three (3) and Pond Four (4).
  - c. 22-11-1 et seq.-CZS failed to comply with Unilateral Order No. 8133. Specifically, a large portion of the project, approximately fifteen (15) to twenty (20) acres, were recently disturbed in violation of the cease and desist terms of the Order.

As a result of the aforementioned violations, NOV Nos. W-NW-TWH-070915-001, W-NW-TWH-070915-002, and W-NW-TWH-070915-003 were issued to CZS.

12. On July 16, 2015, WVDEP issued Unilateral Order No. 8419 to CZS in response to the July 9, 2015 violations. The Order required CZS to:
  - a. Cease and desist any further land development activity until such time when compliance with Unilateral Order Nos. 8133 and 8419, the terms and conditions of its WV/NPDES permit, and all pertinent laws/rules was achieved.
  - b. Within ten (10) days of the effective date of the Order, submit for approval a proposed Plan of Corrective Action, outlining action items and completion dates for how and when CZS would achieve compliance with Unilateral Order Nos. 8133 and 8419.
  - c. Immediately install and maintain necessary storm water and sediment/erosion control devices to prevent the release of sediment-laden water into waters of the State. Temporarily mulch all disturbed areas until such time when compliance with Unilateral Order Nos. 8133 and 8419 was achieved.
  - d. Contact WVDEP personnel for a follow up inspection to confirm all requirements of Unilateral Order Nos. 8133 and 8419 were met prior to restarting operations.
13. On July 21, 2015, WVDEP personnel conducted a compliance assistance meeting on site with CZS representatives to review current site conditions and discuss ways to achieve compliance with Unilateral Order Nos. 8133 and 8419.
14. On September 10, 2015 WVDEP personnel and representatives of CZS 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 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' West Virginia Code, Legislative Rule and permit violations, CZS shall be assessed a civil administrative penalty of seven thousand two hundred thirty dollars (\$7,230) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. CZS 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 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 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 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 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 becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and CZS 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 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 (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 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 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, its successors and assigns.

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

Dan Shearer

Dan Shearer  
CZS Development, LLC

9/11/15

Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised March 2013*

RECEIVED

SEP 15 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 now 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

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

P7150986





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



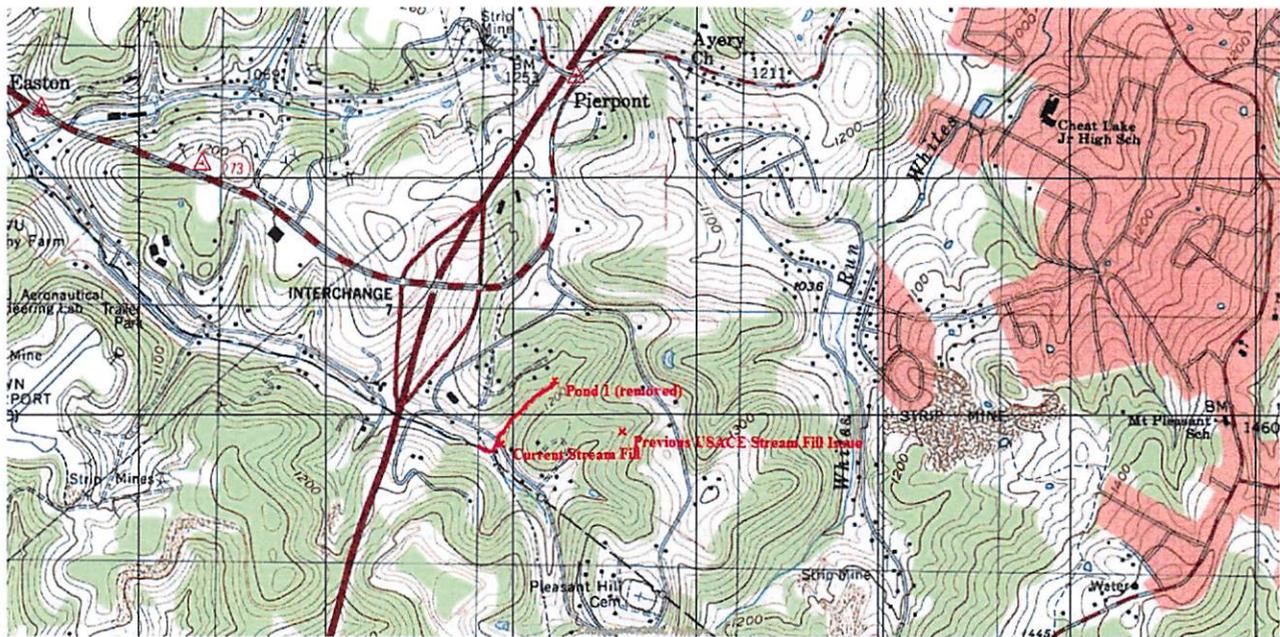
P7151009

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



P7092468

Phase I portion of the site discharges causing Conditions Not Allowable in a UT of West Run



P7092471

Proposed stream restoration section overwhelmed with sediment and sediment-laden water



P7092472

Proposed stream restoration section overwhelmed with sediment and sediment-laden water



P7092478

Other tributaries on the same reach of stream under the same storm conditions running clear



P7092480

Turbid Phase I discharges resulting from recent disturbances and inadequate E&S controls



P7092491

Phase II portion of the site discharges causing Conditions Not Allowable in a UT of West Run



P7092492

Disturbed portions of Phase I with inadequate E&S controls



P7092493

Disturbed portions of Phase I with inadequate E&S controls



P7092498

Approximate proposed location of Pond 4 (not in place)



P7092499

Phase II portion of site recently disturbed in violation of Unilateral Order No. 8133



P7092502

Phase II portion of site recently disturbed in violation of Unilateral Order No. 8133



P7092503

Approximate proposed location of Pond 3 (not in place)

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: CZS Development LLC. Receiving Stream: UT of West Run

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#											
			11a	11b	11c									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	1									
d)	Length of Time	1 to 3	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1									
<b>Average Potential for Harm Factor</b>			1	1	1	No								
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>												
	Degree of Non-Compliance	1 to 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.





## 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 -	15		\$900
6.2.b.4 - Compliance/noncompliance history	25		\$1,500
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$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	(\$600)
6.2.b.3 - Cooperation with the Secretary		10	(\$600)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$1,230</b>
<b>Penalty =</b>			<b>\$7,230</b>

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b> Economic benefit not warranted.	