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west virginia department of environmental protection

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Environmental Enforcement  
601 57<sup>th</sup> Street  
Charleston, WV 25306  
Telephone:: 304-926-0470 Fax: 304-926-0488

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
www.wvdep.org

**MEMORANDUM**

**To:** Whom it may concern  
**From:** Michael A. Zeto, Chief Inspector  
**Date:** January 17, 2012  
**Subject:** Proposed Caiman Order No. 7467

It has come to the attention of the West Virginia Department of Environmental Protection (WVDEP) that the proposed settlement between WVDEP and Caiman Energy initially published was incorrect. The correct proposed settlement is attached, which reflects the following changes from the initial publication:

- Finding #11 revised as follows: During the November 3, 2011 meeting between WVDEP and Caiman Energy, as well as in subsequent communication, Caiman has committed to take all necessary precautions and implement appropriate best management practices for its current construction and/or remediation activity over the coming winter months.
- Finding #12 added as follows: The Cabinet Secretary has considered Caiman's diligence in its preparation and implementation of an appropriate erosion and sediment control manual and practices, as well as its efforts in working with WVDEP toward a process for securing WV/NPDES construction stormwater permits.
- Order for Compliance #12 revised as follows: Because of Caiman Energy's Legislative Rule violations, Caiman Energy shall be assessed a civil administrative penalty of two hundred four thousand one hundred forty-eight dollars (\$204,148). Of the assessed penalty, one hundred fifty-four thousand one hundred forty-eight dollars (\$154,148) will be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. The remaining fifty thousand dollars (\$50,000) of the assessed penalty shall be applied to the completion of a WVDEP approved Supplemental Environmental Project (SEP) within one year of entry of this Order. In the event that the SEP is not completed as proposed, the fifty thousand dollars (\$50,000) designated for the SEP shall become due and payable upon demand by WVDEP. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

All other terms and conditions of the Order remain as originally published.

Considering the time remaining in the public comment period and the minimal changes, WVDEP does not plan any revision to the public comment period. However, should WVDEP receive a request to do so, it will consider an extension of 12 days. Please direct any such request to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

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DEC 27 2011

west virginia department of environmental protection

ENVIRONMENTAL

Enforcement  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
www.dep.wv.gov

December 12, 2011

Mr. Jack Lafield, President  
Caiman Energy, LLC  
5949 Sherry Lane, Suite 1300  
Dallas, Texas 75225

91 7199 9991 7030 8756 2118  
CERTIFIED RETURN RECEIPT REQUESTED

RE: Violation of Chapter 22, Article 11  
of the WV State Code

Dear Mr. Lafield:

Enclosed is 2<sup>nd</sup> revised CONSENT ORDER NUMBER 7467 dated December 12, 2011. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Caiman Energy, LLC violating Chapter 22, Article 11 of the WV State Code at its facility located in Marshall County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer. This revision to the Order and the penalty contained within considers information provided to WVDEP by Caiman Energy, LLC.

This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto  
Chief Inspector

Enclosure

- cc: Scott G. Mandirola, Director, DWWM (via e-mail)
- Yogesh Patel, Asst. Director, DWWM/Permits
- Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
- Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
- David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
- Laura McGee, Environmental Resources Specialist, EE (via e-mail)

Brad Swiger, Environmental Inspector Supervisor, EE/WW (via e-mail)  
Tonya Mather, Environmental Inspector, EE/WW (via e-mail)  
Shyrel Moellendick, MSSS, EE (via e-mail)  
Lisa Trakis, US EPA, Region III (via Waterscape)  
Stephanie Andreescu, US EPA (via e-mail)  
James Martin, WVDEP, OOG (via e-mail)  
Armando Benincasa, Steptoe & Johnson (via e-mail)  
Richard Lewis, Steptoe & Johnson (via e-mail)

*revised September 2011*



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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) 926-0495  
Fax: (304) 926-0463

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

**CONSENT ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Mr. Jack Lafield, President  
Caiman Energy, LLC  
5949 Sherry Lane, Suite 1300  
Dallas, Texas 75225

DATE: December 12, 2011

ORDER NO.: 7467

**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 Caiman Energy, LLC (hereinafter "Caiman Energy").

**FINDINGS OF FACT**

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

1. Caiman Energy is the owner/operator of a gas pipeline under construction in Marshall County, WV. There are significant land disturbance activities necessary for the placement, installation, inspection and testing of the gas pipeline.
2. Caiman Energy relies upon and utilizes various contractors for the design, construction, placement, inspection and oversight of the construction activities.
3. On February 18, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel investigated a complaint concerning construction of a gas pipeline in Fish Creek, Wetzel County, WV. As a result of this investigation, WVDEP determined the following:
  - a. Fish Creek is designated by the WV Department of Natural Resources as a High Quality Stream (Sixth Edition).

Promoting a healthy environment.

- b. A contractor hired by Caiman Energy was constructing a stream crossing for pipeline construction in Fish Creek at or near GPS Coordinate 39°47'29" N and 80°44'56" W.
  - c. A contractor hired by Caiman Energy was side-casting stream rubble and dredged material from the stream crossing activity and causing a brown plume of muddy water downstream of the crossing activity, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. Notice of Violation (NOV) W- NW-TAM-021811-001 was issued to L.A. Pipeline, a contractor hired by Caiman Energy.
  - d. Caiman Energy represents that the contractor hired by Caiman Energy was expected to follow the requirements of Nationwide permit number 12 issued by the Secretary of the Army to discharge dredged and/or fill material into waters of the United States but failed to do so.
  - e. A contractor hired by Caiman Energy did not construct erosion and sediment control structures recognized as prudent and necessary to prevent, control and reduce sediment laden discharge into State waters.
4. On February 23, 2011, WVDEP personnel conducted an inspection of Caiman Energy activities in Marshall County, WV and documented the following:
- a. A contractor hired by Caiman Energy continued construction activities for a pipeline in the Fish Creek and adjacent watersheds.
  - b. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of Fish Creek near or about GPS Coordinate 39° 48' 30" N and 80° 44' 00" W and caused a distinctly visible brown plume of suspended solids and a sludge blanket in State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV BCS-022311-001 was issued to L.A. Pipeline.
  - c. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of West Fork of Lower Bowman Run of Fish Creek near or about GPS Coordinate 39° 48' 45" N and 80° 43' 23" W and caused a distinctly visible brown plume of suspended solids and a sludge blanket in State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV BCS-022311-002 was issued to L.A. Pipeline.
  - d. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of Fish Creek near or about GPS Coordinate 39° 47' 34" N and 80° 45' 34" W and caused a distinctly visible brown plume of suspended solids and a sludge blanket in State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV BCS-022311-003 was issued to L.A. Pipeline.
  - e. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of Fish Creek near or about GPS Coordinate 39° 47' 07" N and 80° 46' 09" W and caused a distinctly visible plume of suspended solids and a sludge blanket in State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV BCS-022311-004 was issued to L.A. Pipeline.
  - f. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of Long Run of Fish Creek near or about GPS Coordinate 39° 46' 47" N and 80° 46' 16" W and caused a distinctly visible brown plume of suspended solids and a sludge blanket in State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV BCS-022311-005 was issued to L.A. Pipeline.



- c. Sediment laden water associated with pipeline construction by a contractor hired by Caiman Energy was observed entering into Cedar Run at or about GPS Coordinate 39° 45' 40" N and 80° 36' 0" W and caused a sludge blanket, a violation of WV Legislative Rule, Title 47, Series 2, Section 3.
  - d. Sediment laden water associated with pipeline construction by a contractor hired by Caiman Energy was observed entering into an unnamed tributary of Fish Creek at or about GPS Coordinate 39° 45' 30" N and 80° 35' 46" W and caused a distinctly visible brown plume in the unnamed tributary of Fish Creek, a violation of WV Legislative Rule, Title 47, Series 2, Section 3.
  - e. Fill material associated with pipeline construction by a contractor hired by Caiman Energy was unlawfully placed in West Virginia Fork of Fish Creek to facilitate equipment passage at or about GPS Coordinate 39° 44' 41" N and 80° 35' 56" W, a violation of WV Legislative Rule, Title 47, Series 2, Section 3.
  - f. Sediment laden water from the pipeline construction access road adjacent to West Virginia Fork entered into West Virginia Fork and created a distinctly visible brown plume, a violation of WV Legislative Rule, Title 47, Series 2, Section 3.
  - g. The length of pipeline in several areas was constructed without erosion and sediment control structures recognized as prudent and necessary to prevent, control and reduce sediment laden discharge into State waters.
7. On July 20, 2011, WVDEP visited Caiman Energy construction activities in Marshall County, WV and documented the following:
- a. A contractor hired by Caiman Energy continued construction activities for a pipeline in Cedar Run and adjacent watersheds.
  - b. A contractor hired by Caiman Energy constructed a pipeline through an unnamed tributary of Cedar Run near or about GPS Coordinate 39° 45' 48" N and 80° 35' 54" W and caused a sludge blanket within State waters, a violation of WV Legislative Rule, Title 47, Series 2, Section 3. NOV NW-SEW-I-070211-01 was issued to Caiman Energy.
8. On July 20, 2011, WVDEP met with Caiman Energy to discuss findings, deficiencies and corrective actions. Caiman also provided WVDEP with a proposed Erosion and Sedimentation Control Plan (ESCP), dated April 11, 2011. Subsequent to this meeting WVDEP provided Caiman with numerous photos from its July inspections.
9. By correspondence, dated August 5 and August 24, 2011, WVDEP commented on Caiman Energy's ESCP and offered suggestions for further attention.
10. A meeting was held between WVDEP and Caiman Energy on November 3, 2011, to discuss the terms of this Order. Caiman Energy maintains that it was the responsibility of its contractor(s) to maintain compliance with all pertinent laws and rules described in the Findings of Fact of this Order. WVDEP maintains that Caiman Energy is responsible for the oversight and direction of the environmental compliance efforts of its contractor(s) and thus failed to ensure that its contractor(s) were in compliance with all pertinent laws and rules.

11. During the November 3, 2011, meeting between WVDEP and Caiman Energy, as well as in subsequent communication, Caiman has committed to take all necessary precautions and implement appropriate best management practices for its current construction and/or remediation activity over the coming winter months.
12. The Cabinet Secretary has considered Caiman's diligence in its preparation and implementation of an appropriate erosion and sediment control manual and practices, as well as its efforts in working with WVDEP toward a process for securing WV/NPDES construction stormwater permits.

### **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. Caiman Energy shall immediately take all necessary erosion and sediment control measures to achieve compliance with WV Legislative Rules and Requirements Governing Water Quality Standards regarding "Conditions Not Allowable" in State waters (Title 47, Series 2, Section 3). These erosion and sediment control measures shall be consistent with the WVDEP, Division of Water and Waste Management erosion and sediment control best management practices (BMPs) manual.
2. Caiman Energy shall seek and secure all appropriate authorization/permits from local, state and federal authorities prior to initiation of all future construction activities including, but not limited to, US Army Corp of Engineers, WV Department of Natural Resources and other relevant agencies not herein specified.
3. Within thirty (30) days of entry of this Order, Caiman Energy shall provide to WVDEP an original and three (3) copies of a detailed and accurate topographic map depicting the location of all projects undertaken by Caiman Energy in West Virginia since November 1, 2010. The map shall be a color coordinated scheme to include the previously requested information and submitted on a standard 24" x 36" format and shall be accompanied by a narrative description of the projects. The map and description shall include all activities associated with Caiman Energy in whole or in part, inclusive of partnerships, mergers, subsidiaries, affiliates, joint ventures and other corporate structures not herein specified.
4. Within thirty (30) days of entry of this Order, Caiman Energy shall complete the final edition of its ESCP, and begin installation and maintenance of appropriate BMPs at all land disturbance activities identified in Item Three (3). Caiman Energy shall demonstrate additional care and caution at all stream crossings, including ephemeral water courses identified, associated or predicted to occur within the higher order watershed.
5. Within thirty (30) days of entry of this Order, Caiman Energy shall submit three (3) copies of its final ESCP to:

**Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road, Suite #1  
Fairmont, WV 26554**

6. Caiman Energy shall obtain WV/NPDES Water Pollution Control Permits for Stormwater Associated with Construction Activities in the future prior to commencing land disturbance associated with construction activity.
7. Construction activities, including grubbing operations, shall not begin until the Permit has been secured and implemented under the terms and conditions of the permitting authority.
8. Caiman Energy shall provide a copy of all appropriate permits and application documents, as identified in Item Two (2), as a supplement to permit application(s).
9. Within thirty (30) days of entry of this Order, Caiman Energy shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates, past and present, for how and when Caiman Energy will achieve compliance with all pertinent laws and rules. The plan of corrective action shall be submitted to:

**Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road, Suite #1  
Fairmont, WV 26554**

A copy of this plan shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

10. Within sixty (60) days of entry of this Order, Caiman Energy shall submit for approval a Supplemental Environmental Project (SEP). The SEP shall be submitted to:

**Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road, Suite #1  
Fairmont, WV 26554**

A copy of this SEP shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57th Street SE  
Charleston, WV 25304**

Upon approval, the SEP and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable SEP and schedule or failure to adhere to the approved schedule is a violation of this Order.

11. Upon demand by WVDEP, Caiman Energy agrees to pay stipulated penalties for violation of any action required by this Order according to the following parameters:

<u>Days of Violation</u>	<u>Amount</u>
1-15	\$1,000 per day
16-30	\$2,500 per day
>30	\$5,000 per day

12. Because of Caiman Energy's Legislative Rule violations, Caiman Energy shall be assessed a civil administrative penalty of two hundred four thousand one hundred forty-eight dollars (\$204,148). Of the assessed penalty, one hundred fifty-four thousand one hundred forty-eight dollars (\$154,148) will be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. The remaining fifty thousand dollars (\$50,000) of the assessed penalty shall be applied to the completion of a WVDEP approved Supplemental Environmental Project (SEP) within one year of entry of this Order. In the event that the SEP is not completed as proposed, the fifty thousand dollars (\$50,000) designated for the SEP shall become due and payable upon demand by WVDEP. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment 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. Caiman Energy 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, Caiman Energy 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, Caiman Energy 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 Caiman Energy 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, Caiman Energy 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 Caiman Energy becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and 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 Caiman Energy 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 Caiman Energy (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 Caiman Energy 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 Caiman Energy 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 Caiman Energy, its successors and assigns.

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

  
\_\_\_\_\_  
Caiman Energy, LLC

December 20, 2011  
\_\_\_\_\_  
Date

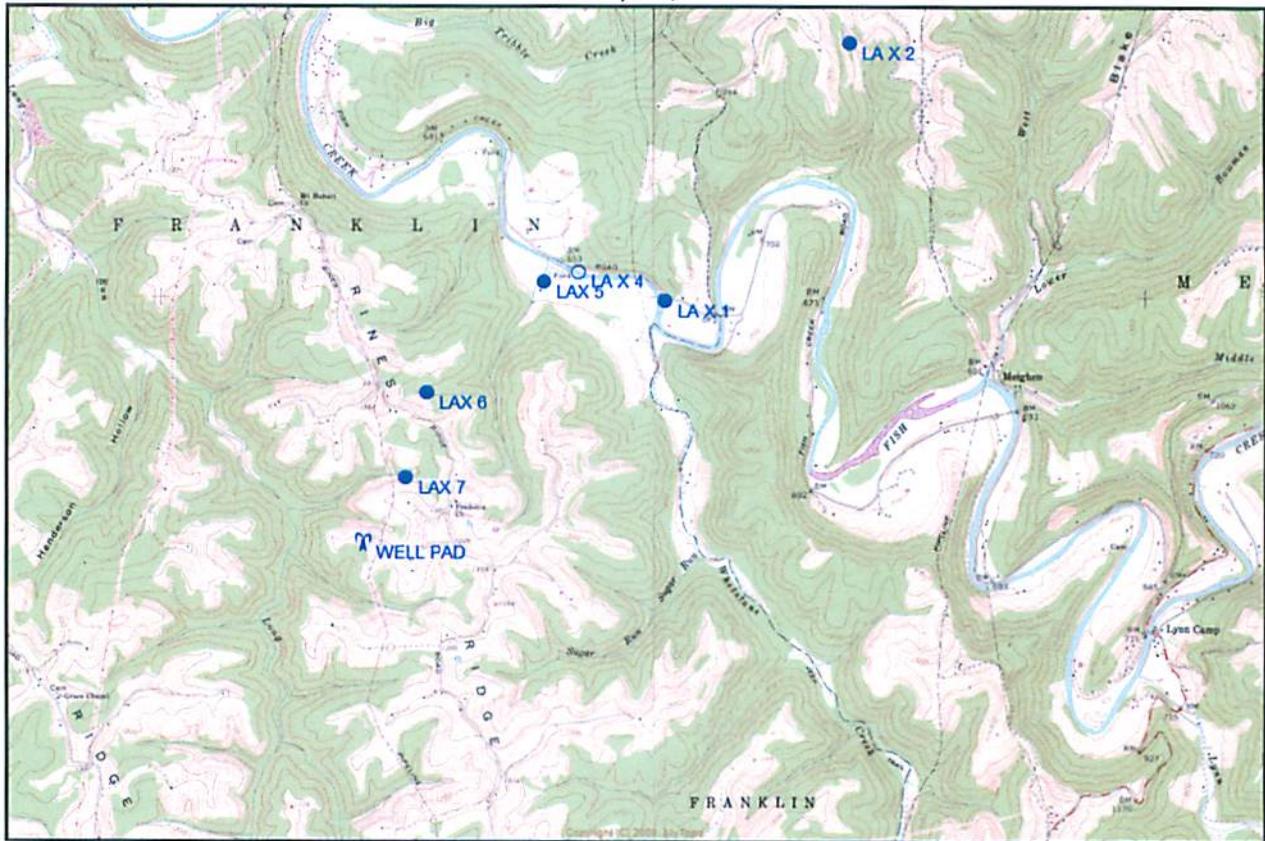
Public Notice begin: \_\_\_\_\_  
Date

Public Notice end: \_\_\_\_\_  
Date

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

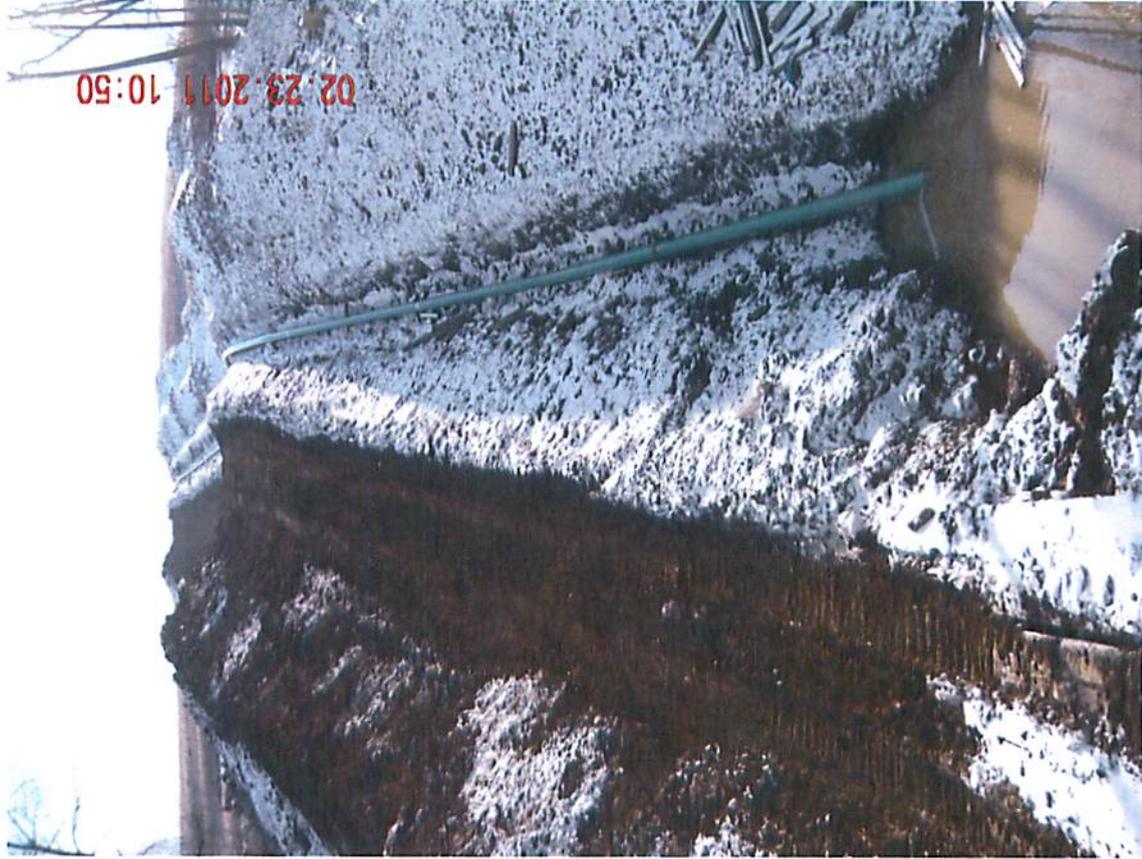
\_\_\_\_\_  
Date

LA Pipeline / Caiman Energy  
 Marshall County  
 February 23, 2011



Site Name	Description	Approximate Coordinate	Stream Name	Action
LA X 1	Pipeline stream crossing	39° 47' 29" N 80° 44' 56" W	Fish Creek	NOV NW-TAM-021811-001
LA X 2	Pipeline stream crossing	39° 48' 30" N 80° 44' 00" W	UT of Fish Creek	NOV BCS-022311-001
LA X 3	Pipeline stream crossing	39° 48' 45" N 80° 43' 23" W	UT of West Fork of Lower Bowman Run of Fish Creek	NOV BCS-022311-002
LA X 4	Access road stream crossing	39° 47' 36" N 80° 45' 23" W	Fish Creek	N/A
LA X 5	Pipeline stream crossing	39° 47' 34" N 80° 45' 34" W	UT of Fish Creek	NOV BCS-022311-003
LA X 6	Pipeline stream crossing	39° 47' 07" N 80° 46' 09" W	UT of Fish Creek	NOV BCS-022311-004
LA X 7	Pipeline stream crossing	39° 46' 47" N 80° 46' 16" W	UT of Long Run of Fish Creek	NOV BCS-022311-005
Well Pad	Well pad	39° 46' 32" N 80° 46' 29" W	Well Pad	N/A

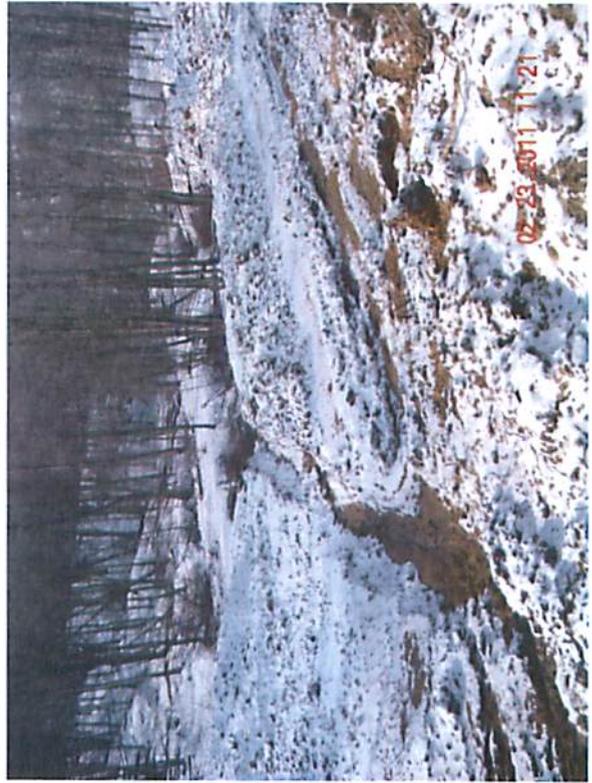
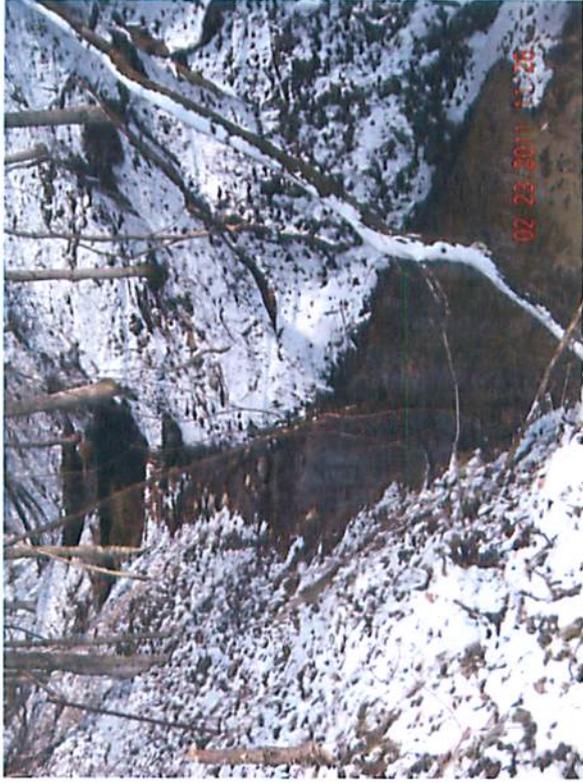
LA Pipeline LA X 2 Photos



LA Pipeline LA X 2 Photos



LA Pipeline LA X 3 Photos

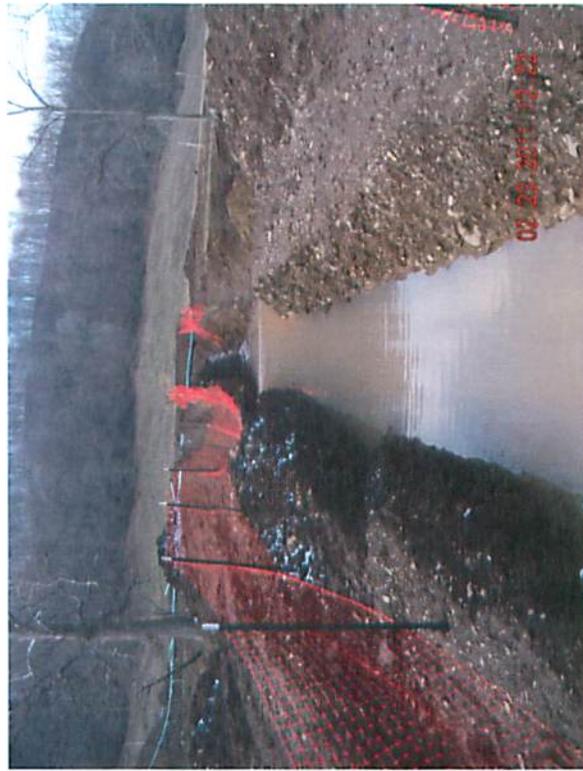
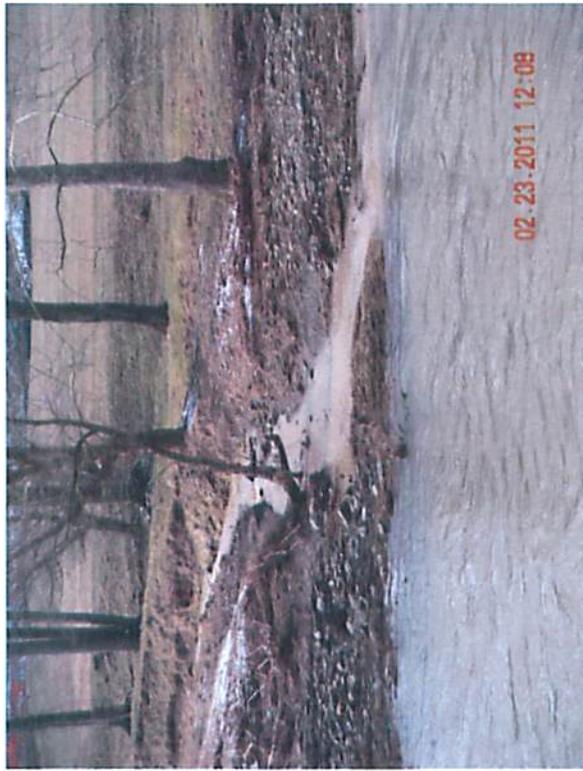


LA Pipeline LA X 3 Photos

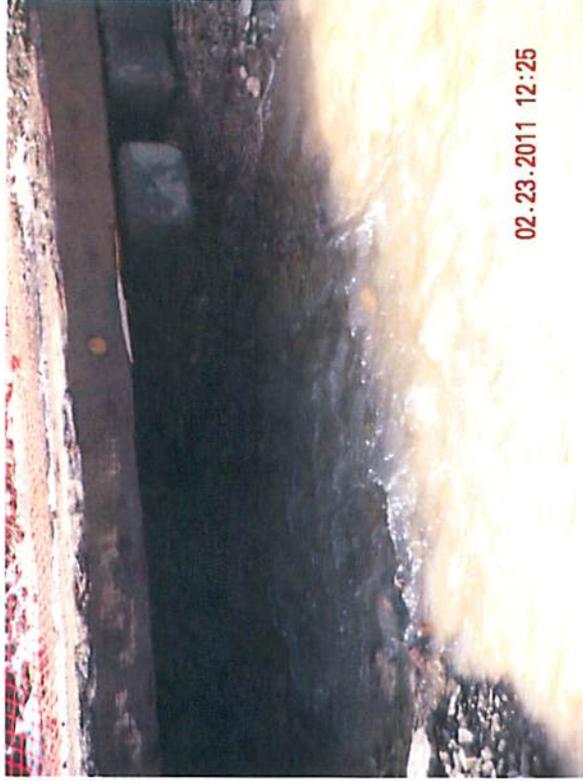
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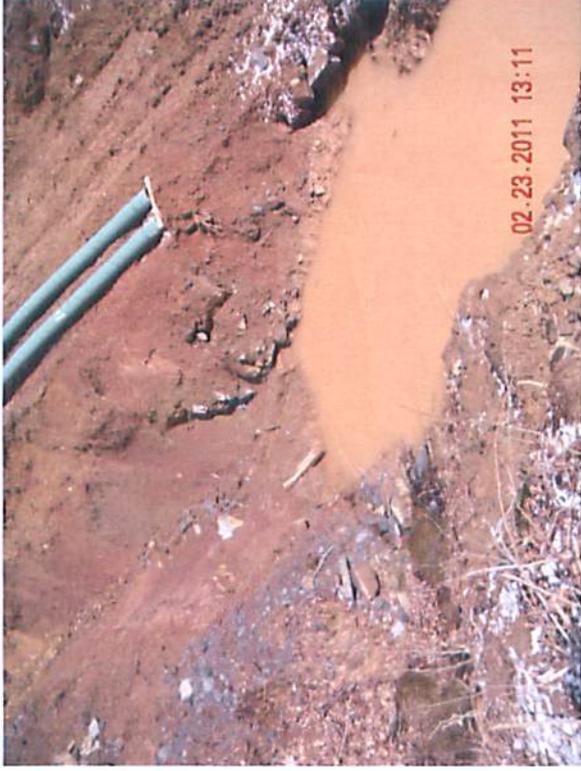
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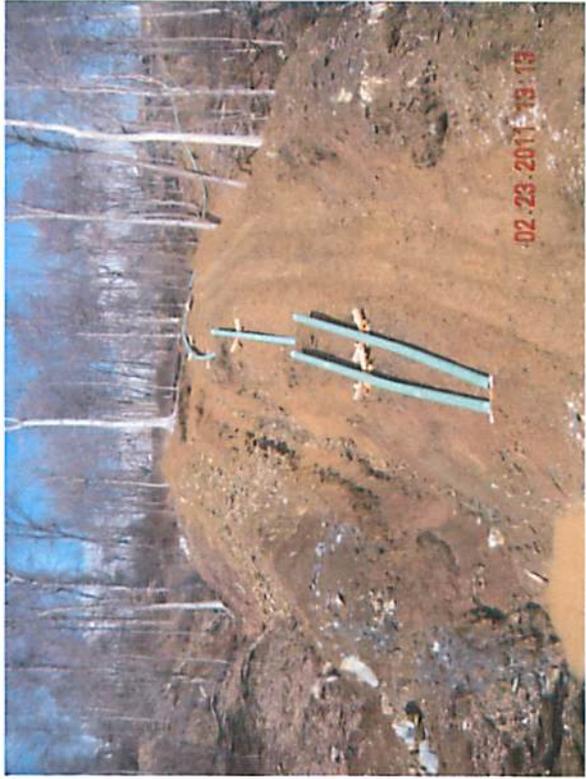
LA Pipeline LA X 5 Photos



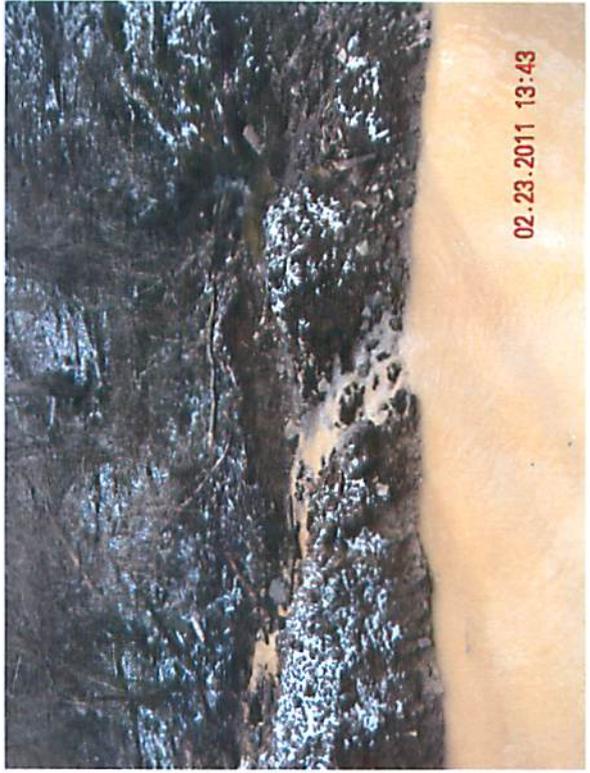
LA Pipeline LA X 6 Photos



LA Pipeline LA X 6 Photos



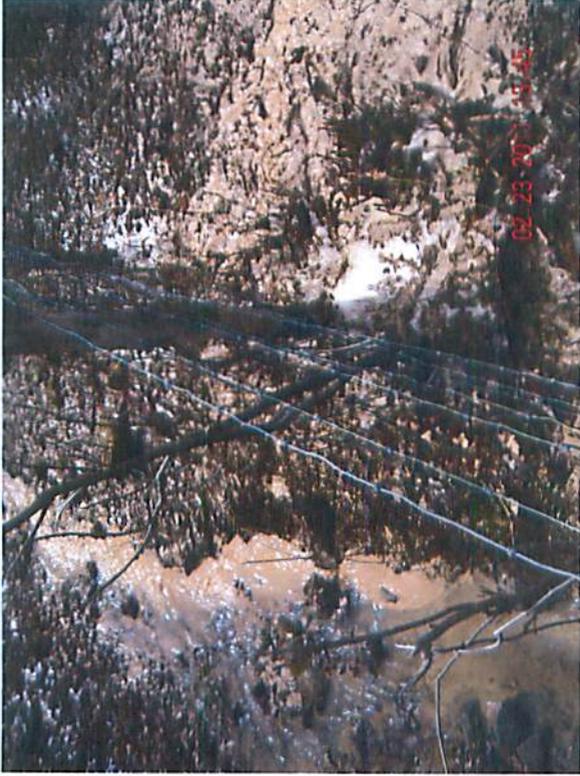
LA Pipeline LA X 7 Photos



LA Pipeline LA X 7 Photos



LA Pipeline LA X 7 Photos





07.11.2011 14:39

07.11.2011 14:44





07.11.2011 14:52



07.11.2011 14:57

07.11.2011 14:57





07.11.2011 14:57

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:**

Caiman Energy

**Receiving Stream:**

Fish Creek

**Treatment System Design Maximum Flow:** NA MGD

**Treatment System Actual Average Flow:** NA MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#														
			3c	4b	4c	4d	4e	4f	5b.ii	5b.iii	6a	6b	6c	6d	6e		
a)	Amount of Pollutant Released	1 to 3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
c)	Sensitivity of the Environment	0 to 3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
d)	Length of Time	1 to 3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
e)	Actual Exposure and Effects thereon	0 to 3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
<b>Average Potential for Harm Factor</b>			2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4	2.4
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	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.





## 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
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$105,118		\$105,118
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)		\$6,600	(\$6,600)
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$13,200)
6.2.b.3 - Cooperation with the Secretary		10	(\$13,200)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$72,148</b>
<b>Penalty =</b>			<b>\$204,148</b>

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	\$105,118
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$105,118</b>
<b>Comments:</b> economic benefit for delayed costs of \$3,000,000	