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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.wvdep.wv.gov](http://www.wvdep.wv.gov)

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

TO: City of Gary  
Attn: Honorable Shirley Duncan  
P.O. Box 310  
Gary, WV 24836

DATE: January 27, 2011

ORDER NO.: 7078

**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 the City of Gary (hereinafter "Gary").

**FINDINGS OF FACT**

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

1. Gary operates a wastewater treatment facility and collection system located at Gary, McDowell County, West Virginia. Gary was issued WV/NPDES Water Pollution Control Permit No. WV0020044 on November 30, 2007 with an effective date of December 30, 2007, and an expiration date of November 29, 2012.
2. On February 12-13, 2008, West Department of Environmental Protection (WVDEP) personnel conducted an inspection of the wastewater treatment facility. During the inspection, the following violations of its WV/NPDES permit and WV Legislative Rules were observed and documented:
  - a. The average monthly flows for November and December of 2007 (0.821 and 1.28 MGD, respectively), and January 2008 (0.685 MGD) all exceeded 90% of the average monthly design flow of 0.675 MGD. This activates the requirement of Section C.10. of its WV/NPDES permit that requires a "Plan of Action" be submitted to maintain required treatment levels.

Promoting a healthy environment.

- b. The discharge caused a visible plume in the receiving stream. Distinctly visible solids or color in waters of the state is a violation of Legislative Rule, Title 47, Series 2, Section 3 (47CSR2-3) (Water Quality Standards).
- c. The secondary clarifier was out of service due to a damaged skimmer-rake drive system. Failure to properly maintain this unit is a violation of Appendix A.II.1. of its WV/NPDES permit.
- d. The permittee's flow meter was reading approximately 39% higher than an accurate reading. Failure to properly operate and maintain this unit is a violation of Appendix A.II.1. of its WV/NPDES permit.
- e. Sludge is stored without runoff protection. Failure to provide such protection is a violation of Section D.05. of its WV/NPDES permit.

As a result of these violations, a Notice of Violation (NOV), dated March 14, 2008, was issued to Gary.

3. On March 14, 2008, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violations of Gary's WV/NPDES permit were observed and documented:
  - a. Inflow & Infiltration (I&I) results in hydraulic overloads (Appendix A.II.1.).
  - b. The return sludge line in the secondary clarifier is inoperable (Appendix A.II.1.).
  - c. Records show effluent exceeded the Max. Daily permit limit for fecal coliform and 85 % removal requirement for TSS and BOD (Section A.001.).
  - d. Sludge stockpiles at the plant are not covered to protect from wet weather. Permittee is cleaning sludge from the drying beds and placing on the ground (Section D.05.).

As a result of these violations, NOV No. 031408-WR-01 was issued to Gary.

4. On November 6, 2008, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violation of Gary's WV/NPDES permit was observed and documented:
  - a. Gary has conducted a planned bypass of raw sewage so that maintenance activities could be performed without following the proper notification procedures as outlined in its WV/NPDES permit (Appendix A.II.3.c.1.).

As a result of the violation, NOV No. 081107-1 was issued to Gary.

5. On December 9, 2008, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violations of Gary's WV/NPDES permit were observed and documented:
  - a. Excessive I & I (Appendix A.II.1.).
  - b. Grit chamber/grit removal system not operating properly (Appendix A.II.1.).
  - c. Sludge return line in secondary clarifier not operating properly "temporary system in use" (Appendix A.II.1.).
  - d. Sludge wasting lines not operable "temporary system in use" (Appendix A.II.1.).

- e. Drive unit on chlorine contact unit is not properly maintained; allowing product to leak into the contact tank; petroleum product sheen present on facility effluent (Appendix A.II.1.).
- f. Plant operator does not possess a Class II certificate as required (Section C.03.).

As a result of these violations, NOV No. W08-27-12/9/2008-02-RHG was issued to Gary.

- 6. On December 9, 2009, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violations of Gary's WV/NPDES permit were observed and documented:
  - a. Permittee failed to meet effluent limitations for % BOD and % TSS removal on multiple occasions during the previous year with 10 excursions for % BOD removal and 8 excursions for % TSS removal (Section A.001).
  - b. Permittee had failed to secure a certified Class II Operator (Section C.03).
  - c. Permittee failed to submit a plan of action for identifying and eliminating sources of I&I within 90 days of permit reissuance (Section C.21).
  - d. Permittee failed to submit Quarterly I&I Reports (Section C.21).
  - e. Permittee failed to properly operate and maintain the facility in that two out of three influent pumps are not operational or present and the sludge rake system for the primary clarifier treatment unit were not in operation (Appendix A.II.1).
  - f. Permittee has caused a prohibited bypass (Appendix A.II.3.d.).

As a result of these violations, NOV No. I-09-27-12/9-MDP was issued to Gary.

- 7. WVDEP personnel reviewed Discharge Monitoring Reports (DMRs) submitted between January 2008 and December 2009 to determine facility compliance with the terms and conditions of WV/NPDES Permit No. WV0020044 (Refer to Table 1). The excursions can be further described as follows:
  - a. Nineteen (19) minor – eight (8) in 2009
  - b. Eight (8) moderate – six (6) in 2009
  - c. Twelve (12) major – five (5) in 2009
- 8. On July 29, 2010, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violations of Gary's WV/NPDES permit and WV Legislative Rule were observed and documented.
  - a. The facility historically experiences high I&I resulting in hydraulic overloads during periods of wet weather (Appendix A.II.1.).
  - b. Permittee has failed to properly submit Quarterly I&I reports as required by the permit (Section C.21.).
  - c. A main collection system line has been broken since early April resulting in raw sewage being continuously discharged into the Tug Fork River (Appendix A.II.1.). This unreported spill also caused conditions not allowable in the Tug Fork River (47 CSR 2 Section 3.2.a.).
  - d. Permittee failed to properly report this ongoing spill (47 CSR 11 Section 2.2.a.).
  - e. Facility currently has one influent pump that is not in operation (Appendix A.II.1.).

- f. Facility is not currently being operated by a certified Class II Operator (Section C.03.).
  - g. The trickling filter distribution arm is severely degraded due to excessive corrosion (Appendix A.II.1.).
9. On August 4, 2010, WVDEP personnel conducted a review of the facility's records. During the review, the following items were observed and documented:
- a. On December 18, 2009, a representative from the City of Gary called in a bypass to the spill line. This notification did not set forth the quantity spilled, action or actions taken to stop the spill and to minimize the polluting effect thereof, or the measures taken or to be taken in order to prevent a recurrence of any spill, nor did the City of Gary submit the required 5 day follow up letter as required by Appendix A, Section IV.2.a) of its permit.
  - b. A letter from the City of Gary, dated January 29, 2010, stated, "Rake system for the Primary Treatment is been repaired as of this date. Water is being pumped out so metal grid work can be repaired or replaced. We have purchased one pump and are repairing the second pump. This is ongoing and should be completed in very near future. Possibly in next few days. With primary sludge rake system down plant was out of service, Therefore we called by-pass hot line and had no choice but to by-pass."
  - c. A letter from the City of Gary, dated February 16, 2010, stated, "We hope to have Primary Clarifier back on line very soon. We are pumping clarifier out to do metal work on skimmer assembly. Bad weather for the last two months has hampered our efforts significantly. We are doing an all out effort."
  - d. A letter from the City of Gary, dated March 18, 2010, stated, "We have cleaned primary clarifier and taking out grid work. We have ordered metal to rebuild skimmer and scraper assembly. Metal should be here in a matter of days. Rebuilding will begin day of receiving the metal."
  - e. A letter from the City of Gary, dated April 19, 2010, stated "With progress being made I am keeping you informed on our Sewage Treatment Plant. We are still rebuilding the Skimmer assembly on the primary clarifier. Work has been steady and going well. However, I cannot give a date at this time of when it will be complete but we are making very good progress at it. With efforts, everyday I will keep you posted. There will not be a DMR Report made until work is completed."
  - f. A letter from the City of Gary, dated May 19, 2010, stated "I am reporting on our project of rebuilding our sewage plants primary clarifier. We have rebuilt the skimmer assembly. It has been set in place. Welding it to centerpiece is in progress. Belts on bottom of drag arms also being work on. Work inspection and repairs on secondary and chlorine contact tank also are about finished. When we get it back on line, in the very near future, I will notify you."
  - g. A letter from the City of Gary, dated July 1, 2010, stated "Enclosed is progress and explanation of work being done on our sewage plant. We had to pump the primary clarifier empty so we could analyze problems. We ordered all metal to rebuild skimmer assembly. We worked too remove all metal from the assembly, then started to rebuild the assembly. We pumped the secondary clarifier down, inspected and done all work needed. Cleaned chlorine contact tank. Upon cleaning we discovered we needed cut off valves and check valves in line going from basement holding

chamber for two pumps going to the primary. These we installed, June 30, 2010 & July 1, 2010 by Precision Pump & Valve services, Inc. All other work has been done by our city employee's. I expect to have it back on line in a couple of working days. I will notify you when the job has come close to being completed or has been completed. I hope I have covered all required with this job."

- h. A letter from the City of Gary, dated July 22, 2010, stated "We have completed the work on the Primary Clarifier. It is working properly with the flow from the primary clarifier to the vacuum chamber to the trickling filter. However, the flow will not turn arms on the trickling filter around. With assurance, we are trying to resolve this problem. We manually push the arms around to distribute the flow over the trickling filter, until we are able to resolve this problem."

Based upon these findings, it has been determined that Gary has been bypassing raw sewage into the Tug River for just over 7 months, a violation of WV Code, Chapter 22, Article 11, Section 8(b)(2).

10. On August 19, 2010, representatives of Gary met with WVDEP personnel to discuss the draft Order. During the meeting, the City of Gary requested to have its ability to pay a civil administrative penalty evaluated. Subsequent to the meeting, Gary submitted the necessary financial documentation. Upon evaluation, in accordance with United States Environmental Protection Agency economic models, it was determined that Gary has a reduced ability.
11. The City of Gary represents that the sludge did have run-off protection on February 12-13, 2008, that the sludge stock piles were covered with plastic on March 14, 2008 and that the main collection system line was broken due to a flood on June 18, 2010 and repaired within 3 or 4 days although WVDEP personnel found the line to be broken on July 29, 2010.

### **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. The City of Gary shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and any other pertinent laws and/or rules.
2. Within twenty (20) days of the effective date of this Order, Gary shall submit for approval a proposed corrective action plan and schedule, outlining action items and completion dates for how and when Gary will achieve compliance with all terms and conditions of the permit and/or pertinent laws and rules. The corrective action plan shall be submitted to:

**Environmental Inspector Supervisor  
SE Regional Environmental Enforcement Office  
116 Industrial Drive  
Oak Hill, WV 25901**

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

3. Because of Gary's Legislative Rule and permit violations, Gary shall be assessed a civil administrative penalty of four thousand five hundred dollars (\$4,500) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following payment schedule:

Payment 1 in the amount of \$500 due on or before April 1, 2011  
Payment 2 in the amount of \$500 due on or before May 1, 2011  
Payment 3 in the amount of \$500 due on or before June 1, 2011  
Payment 4 in the amount of \$500 due on or before July 1, 2011  
Payment 5 in the amount of \$500 due on or before August 1, 2011  
Payment 6 in the amount of \$500 due on or before September 1, 2011  
Payment 7 in the amount of \$500 due on or before October 1, 2011  
Payment 8 in the amount of \$500 due on or before November 1, 2011  
Payment 9 in the amount of \$500 due on or before December 1, 2011

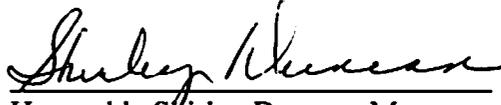
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

### **OTHER PROVISIONS**

1. Gary 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, Gary 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, Gary 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 Gary 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 she 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, Gary 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 Gary 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 Gary 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 Gary (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 Gary 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 Gary 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 Gary, its successors and assigns.

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

  
\_\_\_\_\_  
Honorable Shirley Duncan, Mayor  
City of Gary

2/2/11  
\_\_\_\_\_  
Date

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

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

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

\_\_\_\_\_  
Date

**Table 1**

| Outlet 001 DMR Exceedances - MAX. DAILY - 01/01/08 through 12/31/09 |                |             |                      |                     |              | Degree of non-compliance |     |     |
|---|----------------|-------------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date  | Parameter      | Units       | Permitted max. daily | Reported max. daily | % Exceedance | Min                      | Mod | Maj |
| 01/08   | Fecal Coliform | Cnts/100 ml | 400.00               | 660                 | 65%          | X                        | -   | -   |

| Outlet 00X Exceedances - Minimum 85% Removal - AVG. MONTHLY - 01/01/08 through 12/31/09 |           |       |                             |                    |              | Degree of non-compliance |     |     |
|---|-----------|-------|-----------------------------|--------------------|--------------|--------------------------|-----|-----|
| Date  | Parameter | Units | Permitted Minimum % Removal | Reported % Removal | % Exceedance | Min                      | Mod | Maj |
| 01/08   | BOD       | mg/l  | 85.0                        | 59.7               | 29.8%        | X                        | -   | -   |
| 02/08   | BOD       | mg/l  | 85.0                        | 0.0                | 100.0%       | -                        | -   | X   |
| 03/08   | BOD       | mg/l  | 85.0                        | 0.0                | 100.0%       | -                        | -   | X   |
| 04/08   | BOD       | mg/l  | 85.0                        | 0.0                | 100.0%       | -                        | -   | X   |
| 05/08   | BOD       | mg/l  | 85.0                        | 71.0               | 16.5%        | X                        | -   | -   |
| 06/08   | BOD       | mg/l  | 85.0                        | 44.4               | 47.8%        | -                        | X   | -   |
| 07/08   | BOD       | mg/l  | 85.0                        | 58.4               | 31.3%        | X                        | -   | -   |
| 08/08   | BOD       | mg/l  | 85.0                        | 80.2               | 5.7%         | X                        | -   | -   |
| 10/08   | BOD       | mg/l  | 85.0                        | 54.5               | 35.9%        | -                        | X   | -   |
| 11/08   | BOD       | mg/l  | 85.0                        | 83.1               | 2.2%         | X                        | -   | -   |
| 01/09   | BOD       | mg/l  | 85.0                        | 54.6               | 35.8%        | -                        | X   | -   |
| 03/09   | BOD       | mg/l  | 85.0                        | 0.0                | 100.0%       | -                        | -   | X   |
| 04/09   | BOD       | mg/l  | 85.0                        | 68.0               | 20.0%        | X                        | -   | -   |
| 05/09   | BOD       | mg/l  | 85.0                        | 0.0                | 100.0%       | -                        | -   | X   |
| 06/09   | BOD       | mg/l  | 85.0                        | 75.0               | 11.8%        | X                        | -   | -   |
| 07/09   | BOD       | mg/l  | 85.0                        | 24.4               | 71.3%        | -                        | -   | X   |
| 08/09   | BOD       | mg/l  | 85.0                        | 7.5                | 91.2%        | -                        | -   | X   |
| 09/09   | BOD       | mg/l  | 85.0                        | 64.9               | 23.6%        | X                        | -   | -   |
| 10/09   | BOD       | mg/l  | 85.0                        | 65.2               | 23.3%        | X                        | -   | -   |
| 11/09   | BOD       | mg/l  | 85.0                        | 44.0               | 48.2%        | -                        | X   | -   |
| 12/09   | BOD       | mg/l  | 85.0                        | 59.5               | 30.0%        | X                        | -   | -   |
| 01/08   | TSS       | mg/l  | 85.0                        | 84.7               | 0.4%         | X                        | -   | -   |
| 02/08   | TSS       | mg/l  | 85.0                        | 82.0               | 3.5%         | X                        | -   | -   |
| 03/08   | TSS       | mg/l  | 85.0                        | 28.0               | 67.1%        | -                        | -   | X   |
| 04/08   | TSS       | mg/l  | 85.0                        | 0.0                | 100.0%       | -                        | -   | X   |
| 05/08   | TSS       | mg/l  | 85.0                        | 0.0                | 100.0%       | -                        | -   | X   |
| 06/08   | TSS       | mg/l  | 85.0                        | 0.0                | 100.0%       | -                        | -   | X   |
| 07/08   | TSS       | mg/l  | 85.0                        | 83.3               | 2.0%         | X                        | -   | -   |
| 08/08   | TSS       | mg/l  | 85.0                        | 81.3               | 4.4%         | X                        | -   | -   |

**Table 1**  
(continued)

|       |     |      |      |      |       |   |   |   |
|-------|-----|------|------|------|-------|---|---|---|
| 11/08 | TSS | mg/l | 85.0 | 62.5 | 26.5% | X | - | - |
| 01/09 | TSS | mg/l | 85.0 | 83.3 | 2.0%  | X | - | - |
| 05/09 | TSS | mg/l | 85.0 | 40.0 | 52.9% | - | X | - |
| 06/09 | TSS | mg/l | 85.0 | 55.5 | 34.7% | - | X | - |
| 07/09 | TSS | mg/l | 85.0 | 60.0 | 29.4% | X | - | - |
| 08/09 | TSS | mg/l | 85.0 | 24.0 | 71.8% | - | - | X |
| 09/09 | TSS | mg/l | 85.0 | 43.8 | 48.5% | - | X | - |
| 10/09 | TSS | mg/l | 85.0 | 83.1 | 2.2%  | X | - | - |
| 12/09 | TSS | mg/l | 85.0 | 50.0 | 41.2% | - | X | - |

| Outlet 001 Totals | Degree of non-compliance |     |     |
|-------------------|--------------------------|-----|-----|
|                   | Min                      | Mod | Maj |
|                   | 19                       | 8   | 12  |

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

City of Gary

Receiving Stream:

Tug Fork

Treatment System Design Maximum Flow: 0.75 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# |    |    |    |    |    |    |    |     |    |    |    |    |
|--|-------------------------------------|---------------------|------|----|----|----|----|----|----|----|-----|----|----|----|----|
|  |                                     |                     | 6b   | 6c | 6d | 6e | 6f | 7a | 7b | 7c |     |    |    |    |    |
| a)                                       | Amount of Pollutant Released        | 1 to 3              | 1    | 1  | 1  | 1  | 1  | 1  | 1  | 1  | 2   |    |    |    |    |
| b)                                       | Toxicity of Pollutant               | 0 to 3              | 0    | 1  | 1  | 1  | 1  | 1  | 1  | 1  | 1   |    |    |    |    |
| c)                                       | Sensitivity of the Environment      | 0 to 3              | 0    | 1  | 1  | 1  | 1  | 1  | 1  | 1  | 1   |    |    |    |    |
| d)                                       | Length of Time                      | 1 to 3              | 1    | 1  | 1  | 1  | 1  | 1  | 1  | 1  | 1   |    |    |    |    |
| e)                                       | Actual Exposure and Effects thereon | 0 to 3              | 0    | 1  | 1  | 1  | 1  | 1  | 1  | 1  | 1   |    |    |    |    |
| <b>Average Potential for Harm Factor</b> |                                     |                     | 0.4  | 1  | 1  | 1  | 1  | 1  | 1  | 1  | 1.2 | No | No | No | No |
| 2)                                       | <b>Extent of Deviation Factor</b>   | <b>Factor Range</b> |      |    |    |    |    |    |    |    |     |    |    |    |    |
|  | Degree of Non-Compliance            | 1 to 3              | 3    | 1  | 1  | 1  | 3  | 1  | 2  | 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    |
|---------------------------|--------------------|---------------------|---------|-----------------|-----------------|
| 6b                        | Minor              | Major               | \$1,700 | 1               | \$1,700         |
| 6c                        | Minor              | Minor               | \$1,000 | 1               | \$1,000         |
| 6d                        | Minor              | Minor               | \$1,000 | 1               | \$1,000         |
| 6e                        | Minor              | Minor               | \$1,000 | 1               | \$1,000         |
| 6f                        | Minor              | Major               | \$2,000 | 1               | \$2,000         |
| 7a                        | Minor              | Minor               | \$1,000 | 8               | \$8,000         |
| 7b                        | Minor              | Moderate            | \$1,500 | 6               | \$9,000         |
| 7c                        | Moderate           | Major               | \$4,200 | 5               | \$21,000        |
| 0                         | FALSE              | FALSE               | FALSE   |                 | \$0             |
| 0                         | FALSE              | FALSE               | FALSE   |                 | \$0             |
| 0                         | FALSE              | FALSE               | FALSE   |                 | \$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             |
| <b>Total Base Penalty</b> |                    |                     |         |                 | <b>\$44,700</b> |

## 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 -<br>(flat monetary increase)                  |            |            | \$0                      |
| 6.2.b.7 - Public Interest -<br>(flat monetary increase)                    |            |            | \$0                      |
| 6.2.b.8 - Loss of enjoyment -<br>(flat monetary increase)                  |            |            | \$0                      |
| 6.2.b.9 - Investigative costs -<br>(flat monetary increase)                |            |            | \$0                      |
| 6.2.b.10 - Other factors (size of violator)                                |            |            | \$0                      |
| 6.2.b.10 - Additional Other Factors -<br>Increase (flat monetary increase) |            |            | \$0                      |
| 6.2.b.10 - Additional Other Factors -<br>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  |            |            | \$0                      |
| 6.2.b.3 - Cooperation with the Secretary                                   |            |            | \$0                      |
| 6.2.b.5 - Ability to Pay   |            | 90         | (\$40,230)               |
| <b>Penalty Adjustments</b>   |            |            | <b>(\$40,200)</b>        |
| <b>Penalty =</b>   |            |            | <b>\$4,500</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>   |                        |