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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  
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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: Mingo County PSD  
J.B. Heflin, Manager  
P.O. Box 98  
Naugatuck, WV 25685

DATE: July 7, 2015

ORDER NO.: 8119

**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 Mingo County PSD (hereinafter "Mingo PSD").

**FINDINGS OF FACT**

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

1. Mingo PSD operates the Chattaroy collection system/pump station, the East Kermit collection system/package wastewater treatment plant, and the Shadee Woods Subdivision package plant located in Delbarton, Mingo County, West Virginia. Mingo PSD was reissued WV/NPDES Water Pollution Control Permit No. WV0037699 on November 26, 2008 and June 12, 2013.
2. On April 9, 2014, 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 the terms and conditions of Mingo PSD's WV/NPDES permit were observed and documented:
  - a. Section C.18 and 47CSR10 Section 3.1-Mingo PSD allowed an unpermitted point source discharge from the Chattaroy Pump Station.
  - b. Appendix A.IV.2 and 47CSR11 Section 2.2.a-Mingo PSD failed to give immediate notification of spills or accidental discharges to the Office of Water

Promoting a healthy environment.

- Resources Emergency Notification Number. Specifically, there was evidence of an unreported overflow spill at the main lift station at Shadee Woods Subdivision.
- c. C.19.b and 47CSR2 Section 3.2.b-Mingo PSD created conditions not allowable in waters of the State. Specifically, deposits and a sludge bank were visible below the Chattaroy Pump Station outfall.
  - d. C.19.b and 47CSR2 Section 3.2.b-Mingo PSD created conditions not allowable in waters of the State. Specifically, deposits were visible below the Shadee Woods outfall.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W14-23-27-CJN, W14-23-28-CJN, W14-23-29-CJN and W14-23-31-CJN were issued to Mingo PSD.

3. On April 18, 2014, WVDEP personnel conducted a review of facility records from the time period of the 1<sup>st</sup> quarter of 2012 through the 1<sup>st</sup> quarter of 2014. During this review, the following violations of the terms and conditions of Mingo PSD's WV/NPDES permit were observed:
  - a. Section A.002 - Twenty seven (27) exceedances of Mingo PSD's permit parameters at East Kermit Outfall 002 were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-fourteen (14)
    - ii. Moderate violations-thirteen (13)
  - b. Section A.003 - Fifty four (54) exceedances of Mingo PSD's permit parameters at Shadee Woods Outfall 003 were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-twenty-one (21)
    - ii. Moderate violations-twenty-seven (27)
    - iii. Major violations-six (6)

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W14-23-30-CJN and W14-23-32-CJN were issued to Mingo PSD.

4. On August 20, 2014, WVDEP personnel and representatives of Mingo PSD met to discuss the terms and conditions of this Order.
5. On August 28, 2014 and January 22, 2015, WVDEP personnel received financial documents from Mingo PSD. The provided information was used to perform an economic analysis which evaluated Mingo PSD's ability to pay a civil administrative penalty.
6. On July 6, 2015, WVDEP personnel conducted a review of facility records from the time period of the 2<sup>nd</sup> quarter of 2014 through the 1<sup>st</sup> quarter of 2015. During this review, the following violations of the terms and conditions of Mingo PSD's WV/NPDES permit were observed:

- a. Section A.002 – Five (5) exceedances of Mingo PSD’s permit parameters at East Kermit Outfall 002 were observed and documented (Table 1). These exceedances can be further defined as:
  - i. Minor violations-two (2)
  - ii. Moderate violations-three (3)
- b. Section A.003 – Nine (9) exceedances of Mingo PSD’s permit parameters at Shadee Woods Outfall 003 were observed and documented (Table 1). These exceedances can be further defined as:
  - i. Minor violations-seven (7)
  - ii. Moderate violations-two (2)

**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. Mingo PSD shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Mingo PSD shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mingo PSD will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0037699 and Order No. 8119. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
SW Regional Environmental Enforcement Office  
PO Box 662  
Teays, WV 25569**

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.

3. Because of Mingo PSD’s Legislative Rule and permit violations, Mingo PSD shall be assessed a civil administrative penalty of eleven thousand nine hundred ninety-eight dollars (\$11,998) 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. Mingo PSD 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, Mingo PSD 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, Mingo PSD 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 Mingo PSD 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, Mingo PSD 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 Mingo PSD becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Mingo PSD 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 Mingo PSD 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 Mingo PSD (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 Mingo PSD 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 Mingo PSD 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 Mingo PSD, its successors and assigns.
7. This Order shall terminate upon Mingo PSD's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
\_\_\_\_\_  
J.B. Heflin, Manager  
Mingo County PSD

7-15-15  
\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised March 2013*

**RECEIVED**

**JUL 16 2015**

**ENVIRONMENTAL  
ENFORCEMENT**

Table One: Mingo PSD DMR Exceedance Summary

Outlet 002 DMR Exceedances - AVG. MONTHLY - 1st Qtr 2012 - 1st Qtr 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
June 2012	Total Suspended Solids	mg/l	30	38	27%	X	-	-
July 2012	Total Suspended Solids	mg/l	30	39	30%	X	-	-
Aug 2012	Total Suspended Solids	mg/l	30	77	157%	-	X	-
Aug 2012	Total Suspended Solids	lbs/day	3	5.77	92%	-	X	-
Sept 2012	Total Suspended Solids	mg/l	30	45	50%	-	X	-
Oct 2012	Total Suspended Solids	mg/l	30	79	163%	-	X	-
Oct 2012	Total Suspended Solids	lbs/day	3	6.5	117%	-	X	-
April 2013	Total Suspended Solids	mg/l	30	33	10%	X	-	-
Sept 2013	Total Suspended Solids	mg/l	30	35	17%	X	-	-
June 2014	Total Suspended Solids	mg/l	30	59	97%	-	X	-
June 2014	Total Suspended Solids	lbs/day	3	3.4	13%	X	-	-
July 2014	BOD, 5-Day 20 Deg.C	mg/l	30	66	120%	-	X	-
July 2014	BOD, 5-Day 20 Deg.C	lbs/day	3	4.4	47%	-	X	-
Mar 2012	Ammonia Nitrogen	mg/l	10.12	11.2	11%	X	-	-
June 2012	Ammonia Nitrogen	mg/l	10.12	19.6	94%	-	X	-
July 2012	Ammonia Nitrogen	mg/l	10.12	22.1	118%	-	X	-
Sept 2012	Ammonia Nitrogen	mg/l	10.12	12.3	22%	X	-	-
Oct 2012	Ammonia Nitrogen	mg/l	10.12	16.2	60%	-	X	-
Nov 2012	Ammonia Nitrogen	mg/l	10.12	31.4	210%	-	X	-
Jun 2013	Ammonia Nitrogen	mg/l	10.12	17.3	71%	-	X	-
Sept 2013	Ammonia Nitrogen	mg/l	10.12	23.4	131%	-	X	-
Aug 2012	Ammonia Nitrogen	lbs/day	1.01	1.65	63%	-	X	-
Oct 2012	Ammonia Nitrogen	lbs/day	1.01	1.35	34%	X	-	-
Nov 2012	Ammonia Nitrogen	lbs/day	1.01	2.09	107%	-	X	-
June 2013	Ammonia Nitrogen	lbs/day	1.01	1.29	28%	X	-	-

Outlet 002 DMR Exceedances - MAX. DAILY - 1st Qtr 2012 - 1st Qtr 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
Aug 2012	Total Suspended Solids	mg/l	60	77	28%	X	-	-
Oct 2012	Total Suspended Solids	mg/l	60	79	32%	X	-	-
July 2014	BOD, 5-Day 20 Deg.C	mg/l	60	66	10%	X	-	-
Aug 2012	Ammonia Nitrogen	mg/l	20.24	22.1	9%	X	-	-
Nov 2012	Ammonia Nitrogen	mg/l	20.24	31.4	55%	X	-	-
Sept 2013	Ammonia Nitrogen	mg/l	20.24	23.4	16%	X	-	-
Nov 2012	Ammonia Nitrogen	lbs/day	2.02	2.09	3%	X	-	-

Outlet 002 Totals	Degree of non-compliance		
	Min	Mod	Maj
	16	16	0

Table One: Mingo PSD DMR Exceedance Summary (cont'd)

Outlet 003 DMR Exceedances - AVG. MONTHLY - 1st Qtr 2012 - 1st Qtr 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
Nov 2012	BOD	mg/l	5	6	20%	X	-	-
Jan 2013	BOD	mg/l	5	9	80%	-	X	-
Feb 2013	BOD	mg/l	5	12	140%	-	X	-
May 2013	BOD	mg/l	5	24	380%	-	-	X
June 2013	BOD	mg/l	5	13	160%	-	X	-
July 2013	BOD	mg/l	5	6	20%	X	-	-
Aug 2013	BOD	mg/l	5	6	20%	X	-	-
Sept 2013	BOD	mg/l	5	6	20%	X	-	-
Nov 2013	BOD	mg/l	5	36	620%	-	-	X
Dec 2013	BOD	mg/l	5	16	220%	-	X	-
Jan 2014	BOD	mg/l	5	16	220%	-	X	-
Feb 2014	BOD	mg/l	5	13	160%	-	X	-
March 2014	BOD	mg/l	5	36	620%	-	-	X
June 2014	BOD	mg/l	5	6	20%	X	-	-
Aug 2014	BOD	mg/l	5	6	20%	X	-	-
Dec 2014	BOD	mg/l	5	7	40%	X	-	-
Jan 2015	BOD	mg/l	5	16	220%	-	X	-
Feb 2013	BOD	lbs/day	0.63	1.00	59%	-	X	-
May 2013	BOD	lbs/day	0.63	1.60	154%	-	X	-
June 2013	BOD	lbs/day	0.63	1.40	122%	-	X	-
Dec 2013	BOD	lbs/day	0.63	0.70	11%	X	-	-
Jan 2014	BOD	lbs/day	0.63	1.33	111%	-	X	-
Feb 2014	BOD	lbs/day	0.63	1.06	68%	-	X	-
Aug 2014	BOD	lbs/day	0.63	0.70	11%	X	-	-
Dec 2014	BOD	lbs/day	0.63	0.75	19%	X	-	-
Jan 2015	BOD	lbs/day	0.63	1.73	175%	-	X	-
Jan 2012	Ammonia Nitrogen	mg/l	3	4.5	50%	-	X	-
Feb 2012	Ammonia Nitrogen	mg/l	3	13.4	347%	-	-	X
Sept 2012	Ammonia Nitrogen	mg/l	3	3.4	13%	X	-	-
Nov 2012	Ammonia Nitrogen	mg/l	3	3.1	3%	X	-	-
Jan 2013	Ammonia Nitrogen	mg/l	3	5.9	97%	-	X	-
May 2013	Ammonia Nitrogen	mg/l	3	19.3	543%	-	-	X
Dec 2013	Ammonia Nitrogen	mg/l	3	10.7	257%	-	X	-
Jan 2014	Ammonia Nitrogen	mg/l	3	12.8	327%	-	-	X
March 2014	Ammonia Nitrogen	mg/l	3	8.8	193%	-	X	-
Jan 2012	Ammonia Nitrogen	lbs/day	0.38	0.45	18%	X	-	-
Feb 2012	Ammonia Nitrogen	lbs/day	0.38	1.34	253%	-	X	-
Jan 2013	Ammonia Nitrogen	lbs/day	0.38	0.39	3%	X	-	-
May 2013	Ammonia Nitrogen	lbs/day	0.38	1.25	229%	-	X	-
Dec 2013	Ammonia Nitrogen	lbs/day	0.38	1.20	216%	-	X	-
Jan 2014	Ammonia Nitrogen	lbs/day	0.38	1.06	179%	-	X	-

Table One: Mingo PSD DMR Exceedance Summary (cont'd)

Outlet 003 DMR Exceedances - MAX. DAILY - 1st Qtr 2012 - 1st Qtr 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
Feb 2013	BOD	mg/l	10	12	20%	X	-	-
May 2013	BOD	mg/l	10	24	140%	-	X	-
June 2013	BOD	mg/l	10	13	30%	X	-	-
Nov 2013	BOD	mg/l	10	36	260%	-	X	-
Dec 2013	BOD	mg/l	10	16	60%	X	-	-
Jan 2014	BOD	mg/l	10	16	60%	X	-	-
Feb 2014	BOD	mg/l	10	13	30%	X	-	-
March 2014	BOD	mg/l	10	36	260%	-	X	-
Jan 2015	BOD	mg/l	10	16	60%	X	-	-
May 2013	BOD	lbs/day	1.26	1.6	27%	X	-	-
June 2013	BOD	lbs/day	1.26	1.4	11%	X	-	-
Nov 2013	BOD	lbs/day	1.26	3	138%	-	X	-
Jan 2014	BOD	lbs/day	1.26	1.33	6%	X	-	-
Jan 2015	BOD	lbs/day	1.26	1.73	37%	X	-	-
Feb 2012	Ammonia Nitrogen	mg/l	6	13.4	123%	-	X	-
May 2013	Ammonia Nitrogen	mg/l	6	19.3	222%	-	X	-
Dec 2013	Ammonia Nitrogen	mg/l	6	10.7	78%	X	-	-
Jan 2014	Ammonia Nitrogen	mg/l	6	12.8	113%	-	X	-
May 2013	Ammonia Nitrogen	lbs/day	0.76	1.25	64%	X	-	-
Dec 2013	Ammonia Nitrogen	lbs/day	0.76	1.2	58%	X	-	-
Jan 2014	Ammonia Nitrogen	lbs/day	0.76	1.06	39%	X	-	-
March 2014	Ammonia Nitrogen	lbs/day	0.76	3.9	413%	-	X	-

Outlet 003 Totals	Degree of non-compliance		
	Min	Mod	Maj
	28	29	6



4/9/2014 – Chattaroy - solids in creek.



4/9/2014 – Chattaroy - solids in creek.



4/9/2014 – Chattaroy - sludge banks in creek.



4/9/2014 – Shadee Woods - solids below outfall.



4/9/2014-Shadee Woods - solids below outfall.



4/9/2014 – Shadee Woods - solids below outfall.



4/9/2014 – Shadee Woods - solids below outfall.



4/9/2014 – Shadee Woods - main lift station.



4/9/2014 – Shadee Woods - main lift station.



4/9/2014 - Shadee Woods - main lift station.

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:**

Mingo County PSD

**Receiving Stream:**

Tug Fork River, Pigeon Creek

**Treatment System Design Maximum Flow:** 0.015, 0.012 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#												
			2.a	2.b	2.c	2.d	3.a.i	3.a.ii	3.b.i	3.b.ii	3.b.iii				
a)	Amount of Pollutant Released	1 to 3	2	1	2	2	1	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	1	0	1	1	1	1	1	1	1				
c)	Sensitivity of the Environment	0 to 3	1	0	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	1	0	1	1	1	1	1	1	1				
<b>Average Potential for Harm Factor</b>			1.2	0.4	1.2	1.2	1	1	1	1	1	No	No	No	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	Degree of Non-Compliance	1 to 3	1	3	2	2	1	2	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
2.a	Moderate	Minor	\$2,200	1	\$2,200
2.b	Minor	Major	\$1,700	1	\$1,700
2.c	Moderate	Moderate	\$3,200	1	\$3,200
2.d	Moderate	Moderate	\$3,200	1	\$3,200
3.a.i	Minor	Minor	\$1,000	13	\$13,000
3.a.ii	Minor	Moderate	\$1,500	13	\$19,500
3.b.i	Minor	Minor	\$1,000	20	\$20,000
3.b.ii	Minor	Moderate	\$1,500	24	\$36,000
3.b.iii	Minor	Major	\$2,000	5	\$10,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
<b>Total Base Penalty</b>					<b>\$108,800</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 -	20		\$21,760
6.2.b.4 - Compliance/noncompliance history			\$0
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			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$10,880)
6.2.b.5 - Ability to Pay		99	(\$107,712)
<b>Penalty Adjustments</b>			<b>(\$96,802)</b>
<b>Penalty =</b>			<b>\$11,998</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>	