



west virginia department of environmental protection

Division of Water and Waste Management
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Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

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

TO: Prichard Public Service District DATE: September 2, 2010
Chairperson
P.O. Box 157 ORDER NO.: 6572
Prichard, WV 25555

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 Prichard Public Service District (hereinafter "Prichard").

FINDINGS OF FACT

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

1. Prichard operates a wastewater treatment plant (WWTP) located at Prichard, Wayne County, West Virginia. Prichard was issued WV/NPDES Water Pollution Control Permit No. WV0105732 on March 21, 2005. This permit was reissued on December 31, 2009.
2. On September 16, 2008, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of Prichard's WWTP. WVDEP personnel observed and documented suspended solids discharging into Big Sandy River.
3. This discharge caused distinctly visible floating and suspended solids to the waters of the State, a violation of Title of 47, Series 2, Section 3.2.a. (Conditions Not Allowable In State Waters). Notice of Violation (NOV) #W08-50-57-CM was issued to Prichard.
4. Fecal Coliform sample SW-CM-9/16/08-No.1 was collected from the effluent and submitted to a state certified laboratory to be analyzed. The laboratory results revealed a

count of >60,000 col./100ml, which is a violation of its WV/NPDES permit, Section A. NOV #W08-50-54-CM was issued to Prichard.

5. During the inspection, WVDEP personnel observed and documented that the WWTP appeared septic due to lack of operational controls. NOV #W08-50-56-CM was issued to Prichard for failure to properly operate and maintain the WWTP, a violation of its WV/NPDES permit.
6. A review of agency files revealed that Prichard had failed to submit 2008 Discharge Monitoring Reports (DMRs) to the WVDEP southwest regional office, a violation of its WV/NPDES permit, Appendix A, Section III (Monitoring and Reporting). NOV #W08-50-55-CM was issued to Prichard.
7. Subsequent to the September 16, 2008 inspection, Prichard submitted DMRs for January thru July 2008 to the Division of Water and Waste Management. A review of the Southwest Regional office file revealed that the August 2008 DMR was received on October 8, 2008.
8. A review of the October 2007 thru July 2008 DMRs revealed numerous exceedances as well as instances of partial reporting, improper reporting and failing to report all necessary information. These exceedances and reporting problems are violations of its WV/NPDES permit. The exceedances can be further described as:
 - a. Violations of Average Monthly Permit Limits by $\leq 40\%$ and/or Maximum Daily Permit Limits by $\leq 100\%$: BOD₅, Concentration = 2 violations; TSS, Concentration = 4 violations; NH₃N, Concentration = 1 violation; BOD₅, Mass = 3 violations; TSS, Mass = 2 violations; % Removal BOD₅ = 8 violations; % Removal TSS = 10 violations.
 - b. Violations of Average Monthly Permit Limits by $>40\%$ and $\leq 300\%$ and/or Maximum Daily Permit Limit by $>100\%$ and $\leq 600\%$: BOD₅, Concentration = 3 violations; TSS, Concentration = 2 violations; Fecal Coliform, cnts/100ml = 1 violation; BOD₅, Mass = 4 violations; TSS, Mass = 2 violations.
 - c. Violations of Average Monthly Permit Limits by $>300\%$ and/or Maximum Daily Permit Limits by $>600\%$: BOD₅, Concentration = 2 violations; Fecal Coliform, cnts/100ml = 9 violations; BOD₅, Mass = 3 violations.
9. On November 14, 2008, Prichard met with agency staff to discuss the draft Order. Prichard requested that the agency evaluate its ability to pay a civil administrative penalty and agreed to submit the necessary financial documentation. Prichard has submitted some of the supporting documentation (received on December 9, 2008) but, despite numerous time extensions, has not submitted the July 2007-June 2008 PSC Annual Report. This inhibits the agency from being able to properly evaluate its ability.
10. On January 28, 2009, the City of Huntington was granted approval to accept waste sludge from Prichard, thus increasing Prichard's ability to operate its system.

11. On June 4-5, 2009, WVDEP personnel conducted a compliance sampling inspection (CSI) of Prichard's WWTP and personnel observed and documented the following violations/concerns:
 - a. Suspended solids were discharging from the WWTP as visible by a dark and turbid discharge due to improper operation and maintenance, a violation of its WV/NPDES permit (Appendix A, II.1). The river level was high and appeared muddy.
 - b. A sample was collected for Fecal Coliform and submitted to a state certified laboratory to be analyzed. The laboratory results revealed a count of >60,000 col./100ml, which is a violation of its WV/NPDES permit, Section A.
 - c. The WWTP appeared septic during this inspection. Measurements of Dissolved Oxygen (D.O.) at two points in the system after aeration revealed 0.15 mg/l and 0.28 mg/l, with all three aerators running and only one-half of the plant operating. Normal D.O. is between 1 and 3 mg/l. Prichard's WV/NPDES permit requires that it has a Duty to Comply (Appendix A, I.1). An inability to provide proper aeration will inhibit its compliance with its WV/NPDES permit and other water quality regulations.
 - d. Prichard does not preserve its samples in accordance with the Code of Federal Regulations, Title 40, Part 136, a violation of its WV/NPDES permit (Appendix A, III.3).
 - e. Prichard's flow measurement program was in violation of its WV/NPDES permit. Appendix A, Section III.1 requirements. Flow measurement was inaccurate and Prichard recorded insufficient flow data to meet flow reporting and pollutant poundage reporting requirements.
12. A review of the August 2008 thru April 2009 DMRs revealed numerous exceedances further described as:
 - a. Violations of Average Monthly Permit Limits by $\leq 40\%$ and/or Maximum Daily Permit Limits by $\leq 100\%$: BOD₅, Concentration = 2 violations; TSS, Concentration = 3 violations; NH₃N, Concentration = 2 violations; TSS, Mass = 2 violations; % Removal BOD₅ = 3 violations; % Removal TSS = 2 violations.
 - b. Violations of Average Monthly Permit Limits by $> 40\%$ and $\leq 300\%$ and/or Maximum Daily Permit Limit by $> 100\%$ and $\leq 600\%$: BOD₅, Concentration = 2 violations; TSS, Concentration = 1 violations; BOD₅, Mass = 1 violation; NH₃N, Concentration = 2 violations.
 - c. Violations of Average Monthly Permit Limits by $> 300\%$ and/or Maximum Daily Permit Limits by $> 600\%$: BOD₅, Concentration = 1 violation; Fecal Coliform, cnts/100ml = 4 violations.
13. A review of DMR data revealed numerous instances of incomplete and improper reporting, further described as:

- a. Prichard has failed to report any self-monitoring results for: total recoverable Silver, total recoverable Cadmium, Free Cyanide, total recoverable Nickel, or total recoverable Chromium since the April 20, 2005 effective date of current permit. Each failure to perform the required "1/quarter" monitoring of these parameters is a violation of its WV/NPDES permit (Section A).
- b. Prichard improperly reports their monitoring frequency for total recoverable Silver, total recoverable Cadmium, Free Cyanide, total recoverable Nickel, or total recoverable Chromium as "1/quarter" even though they have not monitored any of these parameters. Failure to follow the reporting format is a violation of its WV/NPDES permit (Appendix A, III.2).
- c. Prichard failed to report pH data on their February 2009 DMR. This failure to monitor and report pH is a violation of its WV/NPDES permit (Section A).
- d. Prichard reports their results for total recoverable Copper, total recoverable Lead, and total recoverable Zinc in measurement units of mg/l even though the DMR reporting format specifies the results are to be reported in measurement units of µg/l. Failure to follow the reporting format is a violation of its WV/NPDES permit (Appendix A, III.2).
- e. Numerous recent DMRs report higher values for the average monthly flow than for the maximum daily flow. This is not possible. Failure to follow the reporting format is a violation of its WV/NPDES permit (Appendix A, III.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. Prichard shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Prichard shall not accept unapproved waste streams from industrial users.
3. Within twenty (20) days of entry of this Order, Prichard shall submit for approval a proposed corrective action plan and schedule, outlining how and when Prichard will achieve compliance with all terms and conditions of the permit and/or pertinent laws and rules.
4. Because of Prichard's permit and Legislative Rule violations, Prichard shall be assessed a civil administrative penalty of seventy three thousand four hundred thirty dollars (\$73,430) to be paid as follows: Five thousand thirty dollars (\$5,030) to be paid to the Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. The remaining sixty-eight thousand four hundred dollars (\$68,400) shall be applied to a Supplemental Environmental Project

(SEP) as outline in Item 5 under this Order for Compliance. 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
WV-DEP
601 57th Street SE
Charleston, WV 25304**

5. This SEP shall be comprised of extending sewer service to customers across US 52, including all necessary piping, manholes, pump station, surface restoration and associated activities. The SEP shall be completed in accordance with the documentation included in Attachment A to this Order.

OTHER PROVISIONS

1. Prichard 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, Prichard 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, Prichard 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 Prichard 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, Prichard 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 Prichard 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 Prichard 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 Prichard (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 Prichard 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 Prichard 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 Prichard, its successors and assigns.
7. This Order shall terminate upon Prichard's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Karen Post
Prichard Public Service District

3/10/11
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

Attachment A

Supplemental Environmental Project Outline and Schedule
(Three pages to follow.)

**PRICHARD PUBLIC SERVICE DISTRICT
WASTEWATER SYSTEM
WV/NPDES NO. WV0105732
ADMINISTRATIVE ORDER NO. 6572**

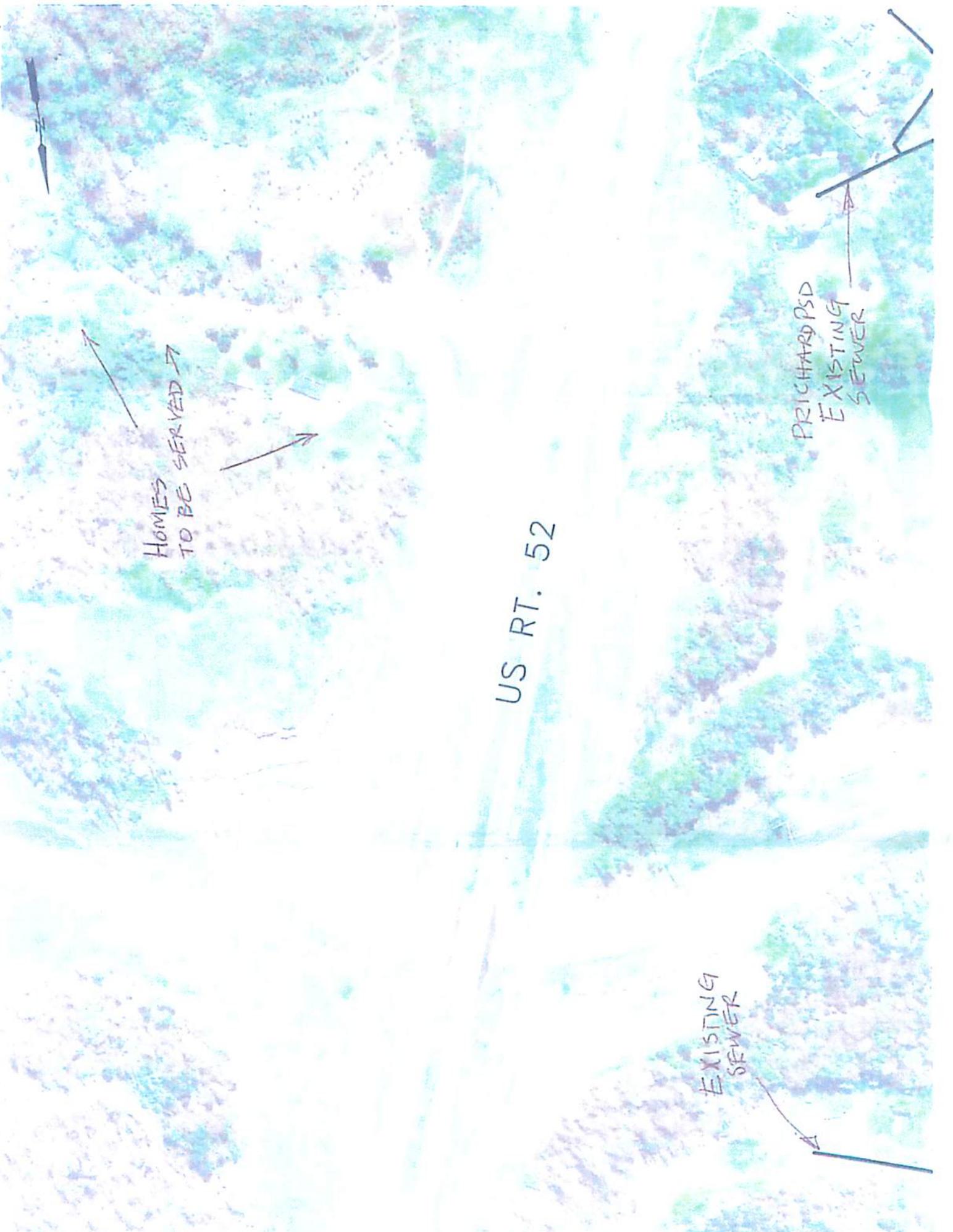
WVDEP - Division of Water and Waste Management has proposed a Consent Order No. 6572 outlining several violations of the WV/NPDES permit requirements. As part of Order for Compliance, WVDEP has proposed a civil administrative penalty of \$ 73,430.

In November 2000, Prichard PSD proposed to serve all customers bounded by U.S. 52 and Big Sandy River due to failing septic tanks or raw sewage discharges. Due to new four lane U.S. 52 and lack of funding, 5 customers across new U.S. 52 could not be served. The District as part of the Special Environmental Project would like to undertake the sewer extensions to these customers to eliminate water quality and potential health problems (see attached map).

Proposed Sewer Extension to 5 Homes

| | |
|--|------------------------------------|
| 600 LF 8" PVC Sewer @ \$ 40/LF | \$ 24,000 |
| 180 LF 4" PVC Service Laterals @ \$ 24/LF | \$ 4,320 |
| 3,000 LF 2" PVC Forcemain @ \$ 16/LF | \$ 48,000 |
| 1 Connection to Existing System | \$ 2,500 |
| 2 Manholes @ \$ 3,000 each | \$ 6,000 |
| 80 LF 4" Casing Bore & Jack @ \$ 100/LF | \$ 8,000 |
| 4,000 LF Surface Restoration @ \$ 3/LF | \$ 12,000 |
| 1 Grinder Pump Station L.S. | <u>\$ 25,000</u> |
| | Base Cost \$ 129,820 |
| | Contingencies 10% <u>\$ 12,980</u> |
| | Construction Cost \$ 142,800 |
| Engineering, Legal, Administration, Permits, accounting @ 25% | <u>\$ 35,700</u> |
| | TOTAL PROJECT COST \$ 178,500 |
| | Say \$ 180,000 |

Therefore, it is requested that WVDEP consider this special project expenditure in lieu of imposing any civil administrative penalty. The District has less than 225 customers and needs the current reserves for any emergency expenses such as pump replacement, blower replacement as well as routine operation & maintenance costs and bond payments.



US RT. 52

HOMES
TO BE SERVED

EXISTING
SEWER

PRICHARD PSD
EXISTING
SEWER



DRAFT

**PRICHARD PUBLIC SERVICE DISTRICT
SEWER EXTENSION PROJECT SCHEDULE
(Revised August 2010)**

The following is an estimated project schedule to extend sewer services to five (5) customers across U. S. 52.

| <u>TASK</u> | <u>BY</u> |
|--|------------------|
| Mapping & Surveying | September 2010 |
| Begin Design | October 2010 |
| Design 50% Complete | December 2010 |
| Final Design | January 2011 |
| Permit Applications (BPH, DEP, DOH) | February 2011 |
| Obtain Permits, Lands & R.O.W. | March 2011 |
| File PSC Certificate Case | April 2011 |
| Obtain PSC - CON | June 2011 |
| Advertise for Bids | July 2011 |
| Open Bids | August 2011 |
| Award Bids | September 2011 |
| Begin Construction | November 2011 |
| Complete Construction | June 2012 |
| Issue Substantial Completion Certificate | June 2012 |

Rick:

This shortens the schedule by 5 months. Please advise if this is acceptable.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Prichard PSD Receiving Stream: Big Sandy River

Treatment System Design Maximum Flow: 100,000 MGD

Treatment System Actual Average Flow: N/D MGD (if known)

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

| 1) | Potential for Harm Factor | Factor Range | FOF# | | | | | | | | | | | | |
|--|-------------------------------------|---------------------|------|---|---|-----|-----|-----|-----|----|----|----|----|----|----|
| | | | 3 | 4 | 5 | 6 | 8.a | 8.b | 8.c | | | | | | |
| a) | Amount of Pollutant Released | 1 to 3 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | | | | | | |
| b) | Toxicity of Pollutant | 0 to 3 | 1 | 1 | 1 | 0 | 1 | 1 | 1 | | | | | | |
| c) | Sensitivity of the Environment | 0 to 3 | 1 | 1 | 1 | 0 | 1 | 1 | 1 | | | | | | |
| d) | Length of Time | 1 to 3 | 1 | 1 | 1 | 3 | 1 | 1 | 1 | | | | | | |
| e) | Actual Exposure and Effects thereon | 0 to 3 | 1 | 1 | 1 | 0 | 1 | 1 | 1 | | | | | | |
| Average Potential for Harm Factor | | | 1 | 1 | 1 | 0.8 | 1 | 1 | 1.2 | No | No | No | No | No | No |
| 2) | Extent of Deviation Factor | Factor Range | | | | | | | | | | | | | |
| | Degree of Non-Compliance | 1 to 3 | 2 | 3 | 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.

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%

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) | | | \$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 increase) | | | \$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 | | | \$0 |
| Penalty Adjustments | | | \$30 |
| Penalty = | | | \$73,430 |

| 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 | |
| Estimated Economic Benefit | \$0 |
| Comments: None determined. | |