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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  
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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: Calhoun Homes Inc.  
Michele Smith, Manager  
125 Calhoun Homes Drive  
Mt. Zion, WV 26151

DATE: January 3, 2014

ORDER NO.: 7967

**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 Calhoun Homes Inc. (hereinafter "Calhoun Homes").

**FINDINGS OF FACT**

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

1. Calhoun Homes operates a 0.0065 MGD sewage treatment facility located near Mt. Zion, Calhoun County, West Virginia. Calhoun Homes was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550439, on April 18, 2011.
2. On September 20, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of Calhoun Homes' WV/NPDES permit was observed and documented:
  - a. Section B.3- Calhoun Homes failed to submit Discharge Monitoring Reports (DMRs) within twenty (20) days following the end of the reporting period. Specifically, the 2<sup>nd</sup> Quarter 2011 DMR was not submitted.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W11-07-050-MAZ was issued to Calhoun Homes.

3. On July 17, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Calhoun Homes' WV/NPDES permit were observed and documented:
  - a. Section A-Calhoun Homes exceeded its discharge limits.
  - b. Section B.3-Calhoun Homes failed to submit DMRs within twenty (20) days following the end of the reporting period. Specifically, the 2<sup>nd</sup> and 4<sup>th</sup> Quarter 2011 DMRs were not submitted.

As a result of the aforementioned violations, NOV Nos. W12-07-046-MAZ and W12-07-047-MAZ were issued to Calhoun Homes.

4. On October 29, 2012, WVDEP personnel conducted a record review and documented a violation of the following section of the terms and conditions of Calhoun Homes' WV/NPDES permit:
  - a. Section A-Calhoun Homes exceeded its discharge limits.

As a result of the aforementioned violation, NOV No. W12-07-069-MAZ was issued to Calhoun Homes.

5. On April 8, 2013, WVDEP personnel conducted a record review and documented a violation of the following section of the terms and conditions of Calhoun Homes' WV/NPDES permit:
  - a. Section B.3- Calhoun Homes failed to submit DMRs within twenty (20) days following the end of the reporting period. Specifically, the 2<sup>nd</sup> and 4<sup>th</sup> Quarter 2011 and 2<sup>nd</sup> Quarter 2012 DMRs were not submitted.

As a result of the aforementioned violation, NOV No. W13-07-011-MAZ was issued to Calhoun Homes.

6. On May 28, 2013, WVDEP personnel conducted a record review and documented a violation of the following section of the terms and conditions of Calhoun Homes' WV/NPDES permit:
  - a. Section A-Calhoun Homes exceeded its discharge limits.

As a result of the aforementioned violation, NOV No. W13-07-030-MAZ was issued to Calhoun Homes.

7. On June 17, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of Calhoun Homes' WV/NPDES permit was observed and documented:

- a. Section F-Calhoun Homes failed to properly operate and maintain its sewage treatment facility. Specifically, sand filters were being bypassed.

As a result of the aforementioned violation, NOV No. W13-07-037-MAZ was issued to Calhoun Homes.

8. On August 30, 2013, WVDEP personnel conducted a review of facility records from the time period of 3<sup>rd</sup> quarter 2011 through 2<sup>nd</sup> quarter 2013. During this review, the following violations of the terms and conditions of Calhoun Homes' WV/NPDES permit were observed:
  - a. Section A.3-Thirty-five (35) exceedances of Calhoun Homes' permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-eleven (11) exceedances
    - ii. Moderate violations-thirteen (13) exceedances
    - iii. Major violations-eleven (11) exceedances
  - b. Section B.3-Calhoun Homes failed to submit DMRs within twenty (20) days following the end of the reporting period. Specifically, the 2<sup>nd</sup> and 4<sup>th</sup> Quarter 2011 and 2<sup>nd</sup> Quarter 2012 DMRs were not submitted.
9. On December 5, 2013, WVDEP personnel and representatives of Calhoun Homes met to discuss the terms and conditions of this Order.
10. On December 18, 2013, Calhoun Homes submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Calhoun Homes' ability to pay a civil administrative penalty. Also included in the submittal was a plan which outlined corrective actions Calhoun Homes has taken and/or will take to achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action has been incorporated into and has become part of this Order.

### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Calhoun Homes shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Because of Calhoun Homes' permit violations, Calhoun Homes shall be assessed a civil administrative penalty of four thousand five hundred twenty dollars (\$4,520) to be paid to the West Virginia Department of Environmental Protection in accordance with the following schedule:

- Payment 1 in the amount of \$376.66 due on or before March 1, 2014.
- Payment 2 in the amount of \$376.66 due on or before April 1, 2014.
- Payment 3 in the amount of \$376.66 due on or before May 1, 2014.
- Payment 4 in the amount of \$376.66 due on or before June 1, 2014.
- Payment 5 in the amount of \$376.66 due on or before July 1, 2014.
- Payment 6 in the amount of \$376.66 due on or before August 1, 2014.
- Payment 7 in the amount of \$376.66 due on or before September 1, 2014.
- Payment 8 in the amount of \$376.66 due on or before October 1, 2014.
- Payment 9 in the amount of \$376.66 due on or before November 1, 2014.
- Payment 10 in the amount of \$376.66 due on or before December 1, 2014.
- Payment 11 in the amount of \$376.66 due on or before January 1, 2015.
- Payment 12 in the amount of \$376.74 due on or before February 1, 2015.

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. Calhoun Homes 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, Calhoun Homes 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, Calhoun Homes 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 Calhoun Homes 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, Calhoun Homes 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 Calhoun Homes becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Calhoun Homes 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 Calhoun Homes 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 Calhoun Homes (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 Calhoun Homes 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 Calhoun Homes 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 Calhoun Homes, its successors and assigns.
7. This Order shall terminate upon Calhoun Homes' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Michele Smith, Manager  
Calhoun Homes Inc.

  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

Table One:  
Calhoun Homes DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 3rd Qtr 2011 - 2nd Qtr 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3rd 2011	BOD	mg/L	5	6.7	34%	X	-	-
1st 2012	BOD	mg/L	10	62.8	528%	-	-	X
3rd 2012	BOD	mg/L	5	15.5	210%	-	X	-
4th 2012	BOD	mg/L	10	32.9	229%	-	X	-
1st 2013	BOD	mg/L	10	81.9	719%	-	-	X
2nd 2013	BOD	mg/L	5	26	420%	-	-	X
1st 2012	TSS	mg/L	30	80	167%	-	X	-
3rd 2012	TSS	mg/L	30	35.7	19%	X	-	-
4th 2012	TSS	mg/L	30	39	30%	X	-	-
1st 2013	TSS	mg/L	30	62	107%	-	X	-
3rd 2011	NH3N	mg/L	3	4.68	56%	-	X	-
3rd 2011	Fecal Coliform	Cnts/100m	200	3500	1650%	-	-	X
1st 2012	Fecal Coliform	Cnts/100m	200	6000	2900%	-	-	X
4th 2012	Fecal Coliform	Cnts/100m	200	280	40%	X	-	-
1st 2013	Fecal Coliform	Cnts/100m	200	300	50%	-	X	-
2nd 2013	Fecal Coliform	Cnts/100m	200	5200	2500%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - 3rd Qtr 2011 - 2nd Qtr 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
1st 2012	BOD	mg/L	20	62.8	214%	-	X	-
3rd 2012	BOD	mg/L	10	15.5	55%	X	-	-
4th 2012	BOD	mg/L	20	32.9	65%	X	-	-
1st 2013	BOD	mg/L	20	81.9	310%	-	X	-
2nd 2013	BOD	mg/L	10	26	160%	-	X	-
1st 2012	TSS	mg/L	50	80	33%	X	-	-
1st 2013	TSS	mg/L	50	62	3%	X	-	-
3rd 2011	Fecal Coliform	Cnts/100m	400	3500	775%	-	-	X
1st 2012	Fecal Coliform	Cnts/100m	400	6000	1400%	-	-	X
2nd 2013	Fecal Coliform	Cnts/100m	400	5200	1200%	-	-	X

Outlet 001 DMR Exceedances - INSTANTANEOUS. MAX. - 3rd Qtr 2011 - 2nd Qtr 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
1st 2012	BOD	mg/L	25	62.8	151%	-	X	-
3rd 2012	BOD	mg/L	12.5	15.5	24%	X	-	-
4th 2012	BOD	mg/L	25	32.9	32%	X	-	-
1st 2013	BOD	mg/L	25	81.9	228%	-	X	-
2nd 2013	BOD	mg/L	12.5	26	108%	-	X	-
1st 2012	TSS	mg/L	75	80	7%	X	-	-
3rd 2011	Fecal Coliform	Cnts/100m	500	3500	600%	-	X	-
1st 2012	Fecal Coliform	Cnts/100m	500	6000	1100%	-	-	X
2nd 2013	Fecal Coliform	Cnts/100m	500	5200	940%	-	-	X

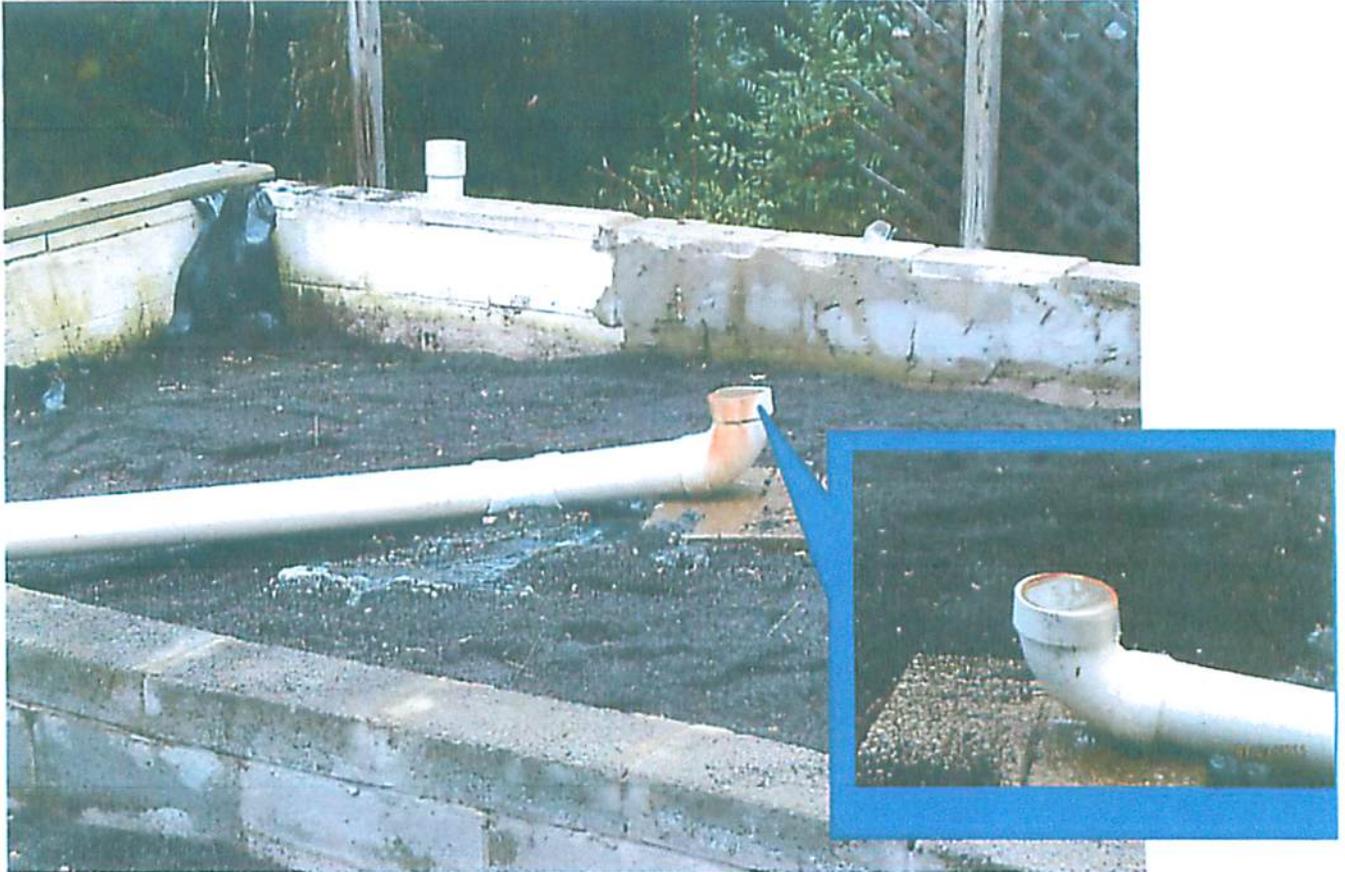
Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		11	13	11



09/19/11 – Vegetative growth on the sand filters



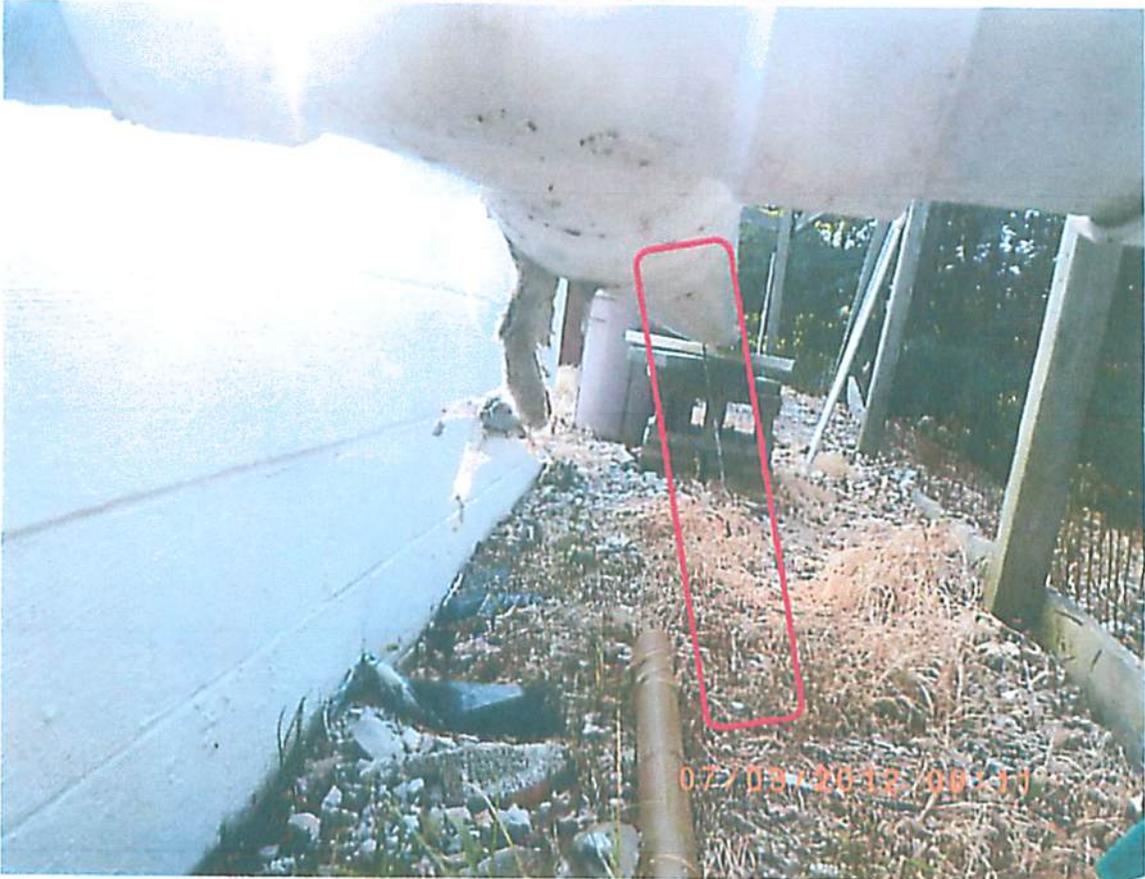
09/19/11 – Sand filters leaking



09/20/11 – Gravity dosed sand filter



09/20/11 – Discharge from UV unit



07/03/12 – Flow entering sand filters leaking



07/03/12 – Sand filters out of service for repair



07/03/12 – Discharge from UV unit



07/17/12 – Sand filters back in operation



06/17/13 – Sand filters not operating properly



06/17/13 – Discharge from UV unit



06/17/13 – Package plant painted/coated and received new grating



07/31/13 – Sand filters emptied for repair

## Base Penalty Calculation

(pursuant to 47CSRI-6.1)

Responsible Party:

Calhoun Homes, LLC

Receiving Stream:

unknown trib. of West Fork of the little Kanawha River

Treatment System Design Maximum Flow: 0.0065 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#														
			7a	8ai	8aii	8aiii	8b										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	0										
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	0										
d)	Length of Time	1 to 3	1	1	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	0										
<b>Average Potential for Harm Factor</b>			1	1	1	1	0.4	No									
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>															
	Degree of Non-Compliance	1 to 3	3	1	2	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)			\$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)		40	(\$17,960)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$4,490)
6.2.b.3 - Cooperation with the Secretary		10	(\$4,490)
6.2.b.5 - Ability to Pay		30	(\$13,470)
<b>Penalty Adjustments</b>			<b>(\$40,380)</b>
<b>Penalty =</b>			<b>\$4,520</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>	