west virginia department of environmental protection

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

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

CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
SOLID WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 15

TO: Pyramid Properties, LLC
David Coughenour
5195 West Pea Ridge Rd.
Huntington, WV 25705

DATE: July 26, 2013

ORDER NO.: MM-13-011

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. and Chapter 22, Article 15, Section 1 et seq. to David Coughenour and/or Pyramid Properties, LLC (hereinafter "Coughenour/Pyramid").

FINDINGS OF FACT

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

1. Coughenour/Pyramid is conducting land disturbance activity associated with construction of Royal Oaks Apartments Phase II located near Huntington, Cabell County, West Virginia.

2. On January 10, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rule were observed and documented:

a. 22-11-8 and 47CSR10-Coughenour/Pyramid failed to obtain a WV/NPDES permit prior to commencing construction activity with land disturbance greater than one (1) acre.

As a result of the aforementioned violations, Notice of Violation (NOV) No. I13-06-180-MBC was issued to Coughenour/Pyramid.

3. On February 1, 2013, Order No. 7792 was issued by WVDEP to Coughenour/Pyramid for failing to obtain a WV/NPDES permit prior to commencing construction activity with land disturbance greater than one (1) acre.

4. On February 13, 2013, Coughenour/Pyramid was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106446, to cover land disturbance activities at the aforementioned site.

5. On February 26, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code, WV Legislative Rule, and Coughenour/Pyramid's WV/NPDES permit were observed and documented:

   a. D.1-Coughenour/Pyramid failed to operate and maintain all erosion control devices.
   b. B-Coughenour/Pyramid failed to comply with the approved Storm Water Pollution Prevention Plan (SWPPP). Several erosion control devices were not in place as detailed by the SWPPP.
   c. 33CSR1 Section 7.1.a-Coughenour/Pyramid created an open dump on the permitted site.
   d. C.15-Coughenour/Pyramid failed to post an outlet marker at all permitted outlets from the construction site.
   e. G.4.e.2.A.ii.j- Coughenour/Pyramid allowed sediment-laden water to leave the site without going through an appropriate device.
   f. 22-11-1 et seq. and G.4.e.2.B- Coughenour/Pyramid failed to comply with Order for Compliance No. Four (4) of Order No. 7792 and its WV/NPDES permit by failing to install and maintain necessary storm water and sediment/erosion control devices, as outlined in its Stormwater Pollution Prevention Plan (SWPPP), to prevent the release of sediment-laden water into waters of the State.

As a result of the aforementioned violations, NOV Nos. I13-06-189-MBC, I13-06-190-MBC, I13-06-191-MBC, I13-06-192-MBC, I13-06-193-MBC, and I13-06-194-MBC were issued to Coughenour/Pyramid.

6. On March 21, 2013, WVDEP personnel conducted a file review. During the review, the following violation of WV State Code was observed and documented:

   a. 22-11-1 et seq.- Coughenour/Pyramid failed to comply with Order for Compliance No. Three (3) of Order No. 7792. Specifically, Coughenour/Pyramid

failed to submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Coughenour/Pyramid would achieve compliance with all pertinent laws and rules.

As a result of the aforementioned violation, NOV No. I13-06-204-MBC was issued to Coughenour/Pyramid.

7. On April 2, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violation of WV State Code and Coughenour/Pyramid's WV/NPDES permit was observed and documented:

   a. 22-11-1 et seq. and Section G.4.e.2 – Coughenour/Pyramid failed to comply with Order for Compliance No. One (1) of Order No. 7792 and its WV/NPDES permit. Specifically, construction activity was conducted prior to installation of necessary storm water and sediment/erosion control devices.

   As a result of the aforementioned violation NOV No. I13-06-205-MBC was issued to Coughenour/Pyramid.

8. On July 18, 2013, WVDEP personnel and representatives of Coughenour/Pyramid met to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 15, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Coughenour/Pyramid 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 thirty (30) days of the effective date of this Order, Coughenour/Pyramid shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Coughenour/Pyramid 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 Water Pollution Control Permit No. WV0115924, Registration No. WVR106446, and Order No. MM-13-011. 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 57th 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 Coughenour/Pyramid's West Virginia Code, Legislative Rule and permit violations, Coughenour/Pyramid shall be assessed a civil administrative penalty of seventeen thousand fifty dollars ($17,050) 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 57th Street SE
Charleston, WV 25304

OTHER PROVISIONS

1. Coughenour/Pyramid hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 15, Section 16 of the Code of West Virginia. Under this Order, Coughenour/Pyramid 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, Coughenour/Pyramid 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 Coughenour/Pyramid 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, Coughenour/Pyramid 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 Coughenour/Pyramid becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Coughenour/Pyramid 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 Coughenour/Pyramid 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 Coughenour/Pyramid (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 Coughenour/Pyramid 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 Coughenour/Pyramid 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 Coughenour/Pyramid, its successors and assigns.

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

David Coughenour
Pyramid Properties, LLC

9-9-13
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised January 2013

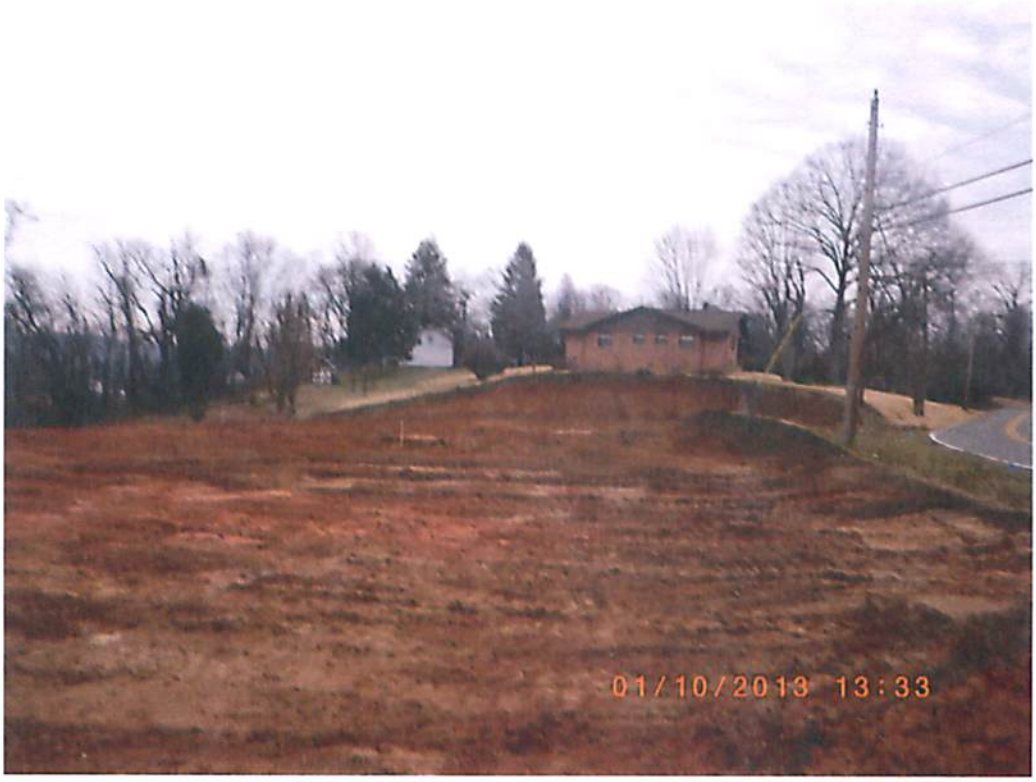
BEING HELD HOSTAGE BY MY OWN GOVERNMENT!

ANY QUESTIONS.

304.751.7538

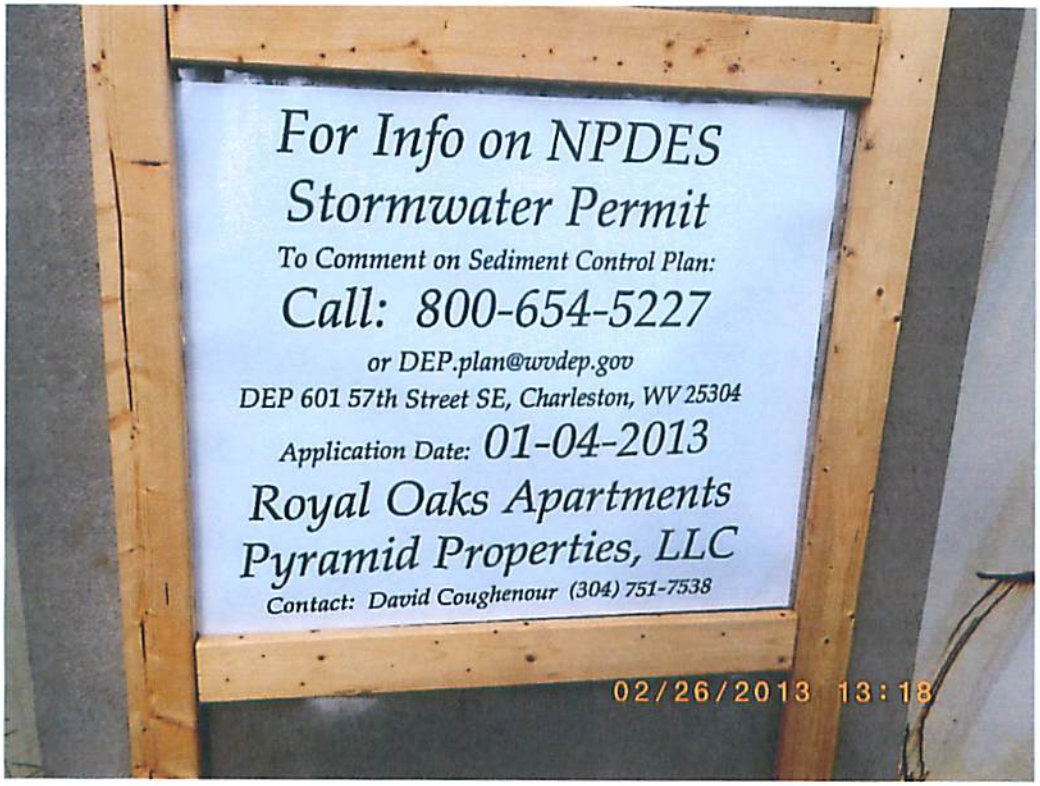
* ALL ISSUES IN ORDER HAVE BEEN ADDRESSED AND PERMIT REINSTATED AS OF 9-6-13

9-4-13



Land disturbed adjacent to West Pea Ridge Road with no erosion/sediment controls.

Down slope areas not protected with erosion/sediment controls



Entrance Sign

Construction entrance off of W. Pea Ridge.

W. Pea Ridge looking down slope to where Pond No. 1 should be located. No mulch on slopes.

Pond No. 1 location

Solid waste mixed with soil.

Water free flowing to Pond No. 2 with sediment filling in the pond..

Silt fence not installed properly.

Silt fence has been overtopped with sediment.

Construction entrance off of Yeich Ave.

Silt fence has been undercut allowing storm water to bypass control structures.

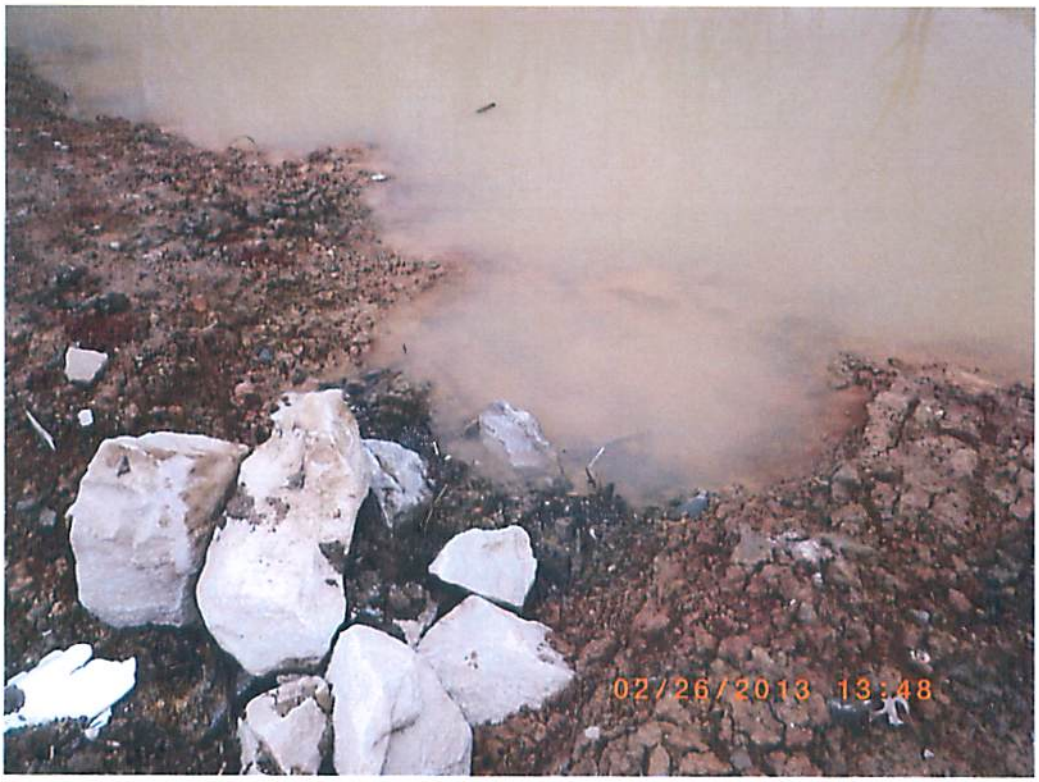
Slope leading down to lower section of site. No silt fence installed and no temporary ditch with check dams.

Drainage area that leads to Pond No. 1. No mulch on slopes, which was required by Order No. 7792.

Silt fence has been improperly joined together, which has led to separation.

Silt fence has been overtopped and sediment deposits left on WVDOH right of way.

Silt fence has not been maintained. Drainage swale has not been installed along the toe of the slope in the background.



Improperly installed weir on Pond No. 2

Poorly rip-rapped drainage ditch for Pond No. 2

Improperly rip-rapped inlet to culvert that runs under the construction road

Culvert improperly outlets into silt fence

Contractor working at the site without notification to WVDEP.

Outlet structure without stabilized channel to the receiving stream

Weir for Pond No.2 not installed properly

Site was not mulched in accordance with Order No. 7792. Also, temporary ditch was not installed to divert water to Pond No. 2.

Silt Fence not installed according to plans. Additional silt fence is shown on the plan further up the slope.

Riprap ditch does not continue to receiving stream.

Riprap ditch was improperly installed, allowing water to flow over the side of the ditch.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: David Coughenour **Receiving Stream:**

Treatment System Design Maximum Flow: **MGD**

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

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

			FOF#												
1)	**Potential for Harm Factor**	**Factor Range**	**2a**	**5a**	**5b**	**5d**	**5e**	**5f**	**6**	**7**					
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1					
b)	Toxicity of Pollutant	0 to 3	0	1	1	0	1	1	0	1					
c)	Sensitivity of the Environment	0 to 3	0	1	1	0	1	1	0	1					
d)	Length of Time	1 to 3	1	1	1	1	1	1	2	3					
e)	Actual Exposure and Effects thereon	0 to 3	0	1	1	0	1	1	0	1					
	Average Potential for Harm Factor		0.4	1	1	0.4	1	1	0.6	1.4	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	3	2	2	1	2	3	3	3					

Potential for Harm Factors:

1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)

1)d - Length of Time of Violation

1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly , >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

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

		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
2a	Minor	Major	$1,700	1	$1,700
5a	Minor	Moderate	$1,500	1	$1,500
5b	Minor	Moderate	$1,500	1	$1,500
5d	Minor	Minor	$400	1	$400
5e	Minor	Moderate	$1,500	1	$1,500
5f	Minor	Major	$2,000	1	$2,000
6	Minor	Major	$1,800	1	$1,800
7	Moderate	Major	$4,400	1	$4,400
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
Total Base Penalty					$14,800

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		$2,960
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		5	($740)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**$2,250**
Penalty =			**$17,050**

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:	