



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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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**

TO: Greenbrier County Solid Waste Authority
Attn: Wayne Childers, Landfill Manager
PO Box 1664
Lewisburg WV, 24901

DATE: November 20, 2013

ORDER NO.: 7975

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 Greenbrier County Solid Waste Authority (hereinafter "GCSWA").

FINDINGS OF FACT

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

1. GCSWA operates a landfill located near Harper, Greenbrier County, West Virginia. GCSWA was issued WV/NPDES Water Pollution Control Permit No. SWF-2068-94/WV0109452 on August 23, 2012.
2. On September 20, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an investigation of the landfill and discovered distinctly visible settleable solids in the Greenbrier River and the unnamed tributary of the Greenbrier River southwest of Harper Road.
3. On September 21, 2013, WVDEP personnel conducted an inspection of the landfill. During the investigation and subsequent inspection, violations of the following sections of WV Legislative Rules were observed and documented:
 - a. 47CSR2 Section 3.2.b. - GCSWA caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the Greenbrier River and the unnamed tributary of the Greenbrier River southwest of Harper Road.

Promoting a healthy environment.

- b. 47CSR2 Section 3.2.a. - GCSWA caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the Greenbrier River and the unnamed tributary of the Greenbrier River southwest of Harper Road. WVDEP personnel determined that the GCSWA landfill was the sole source of visible settleable solids in the Greenbrier River for 3.32 miles from the confluence of the tributary southwest of Harper Road downstream to the town of Caldwell.

As a result of the aforementioned violations, Notice of Violation (NOV) No. 113-13-041-JHH was issued to GCSWA.

4. On September 24, 2013, WVDEP personnel conducted a site visit at the landfill to discuss the aforementioned violations with representatives of GCSWA. During the site visit, it was determined that the source of distinctly visible settleable solids previously observed on September 20 and 21, 2013 was the under drain of a new cell currently under construction. The detection layer was not yet in place, and the under drain was receiving storm water from a land disturbance of approximately four (4) acres. The under-drain discharges via a 48" pipe and diversion ditch to the unnamed tributary of the Greenbrier River southwest of Harper Road. GCSWA represented that there was a sump in place on the bottom of the cell that provided some treatment prior to discharge. It was not visible, because it had apparently been completely buried with sediment.

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. GCSWA shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, GCSWA shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when GCSWA will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to Order No. 7975. The plan of corrective action shall be submitted to:

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

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 GCSWA's Legislative Rule violations, GCSWA shall be assessed a civil administrative penalty of eleven thousand five hundred fifty dollars (\$11,550) 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:**

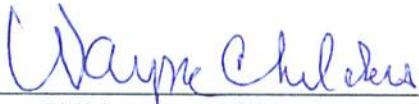
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

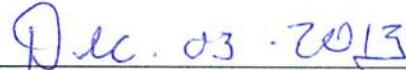
1. GCSWA hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, GCSWA agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, GCSWA 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 GCSWA 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, GCSWA 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 GCSWA becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and GCSWA 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 GCSWA 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 GCSWA (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 GCSWA 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 GCSWA 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 GCSWA, its successors and assigns.
7. This Order shall terminate upon GCSWA's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Wayne Childers, Landfill Manager
Greenbrier County Solid Waste Authority



Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-20-13 - Greenbrier River at Greenbrier River Trail (GRT) mile marker 5.



9-20-13 - Unnamed tributary of Greenbrier River southwest of Harper Road,
just upstream of confluence with Greenbrier River, 100 yards down-current of GRT mile marker 5.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-20-13 - Confluence of unnamed tributary of Greenbrier River southwest of Harper Road and Greenbrier River. Sediment deposits and distinctly visible settleable solids were noted here.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-20-13 - Confluence of unnamed tributary of Greenbrier River southwest of Harper Road and Greenbrier River. Sediment deposits and distinctly visible settleable solids were noted here.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13

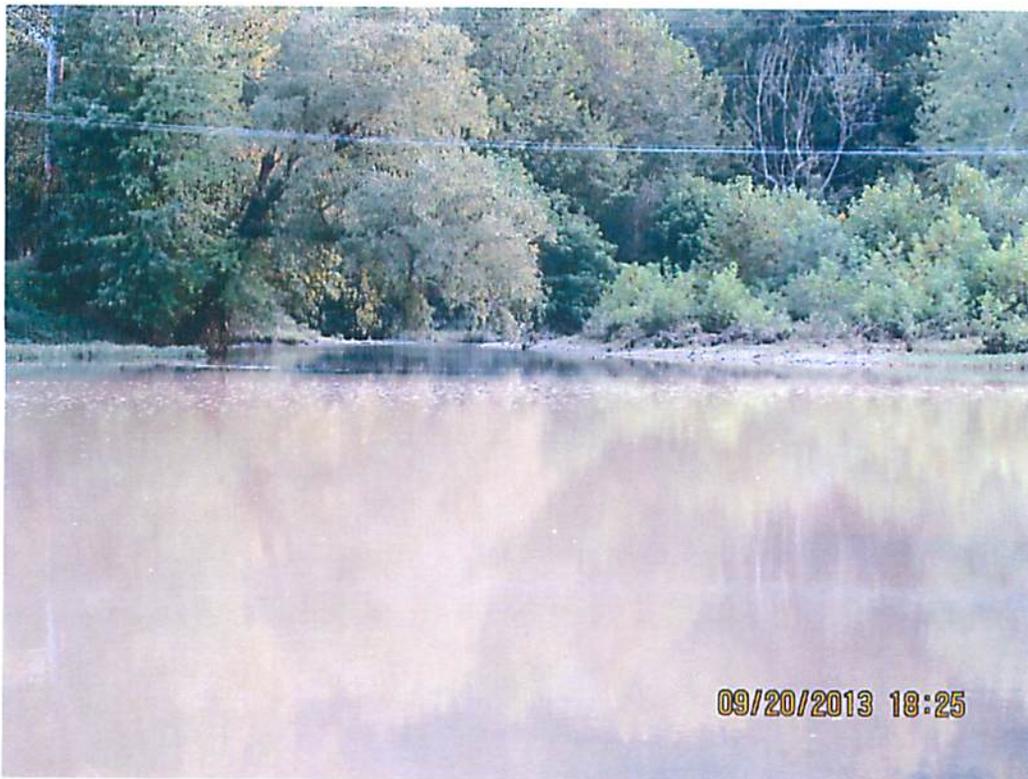


9-20-13 - Greenbrier River at Camp Allegheny.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-20-13 - Greenbrier River at Caldwell River Access.



9-20-13 - Mouth of Howards Creek (clear) at Caldwell River Access.

This and all other tributaries of the Greenbrier River between Caldwell and GRT mile marker 5 were running relatively clear.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13

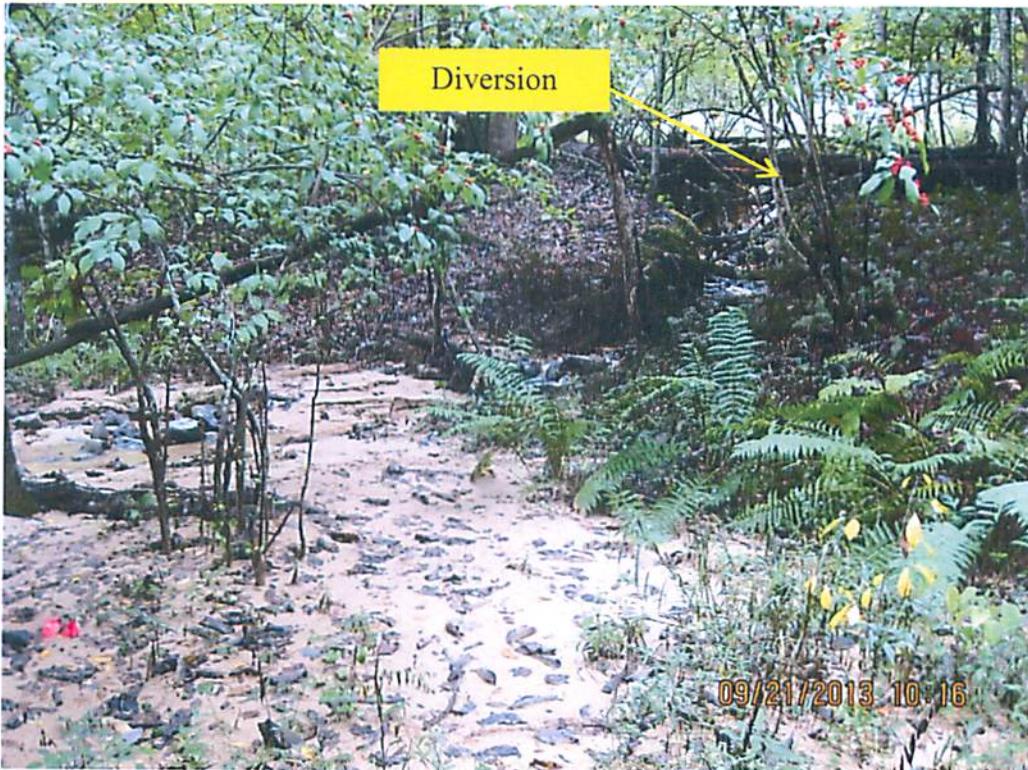


9-21-13 - Unnamed tributary of Greenbrier River southwest of Harper Road at GCSWA landfill
outfall 001.



9-21-13 - Unnamed tributary of Greenbrier River southwest of Harper Road at GCSWA landfill
outfall 003.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-21-13 - Unnamed tributary of Greenbrier River southwest of Harper Road at discharge point of GCSWA landfill stormwater diversion on North East side of landfill.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13

The sequence of photos on the next 6 pages follows the diversion, on the NE side of GCSWA landfill, from the stream upslope to the new cell under-drain discharge point.



9-21-13 - Diversion showing severe erosion.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



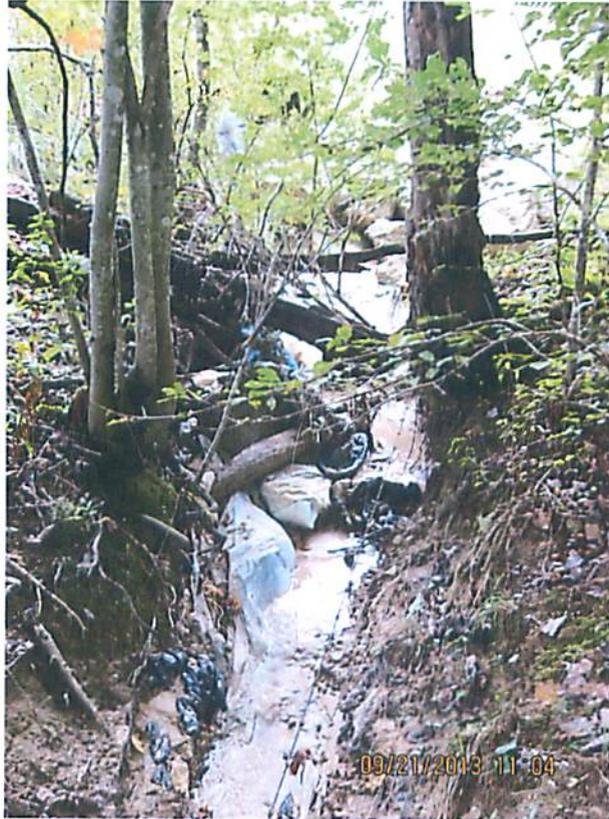
9-21-13 - Sediment deposits in diversion.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-21-13 – Sediment, erosion and municipal solid waste (MSW) in diversion.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13

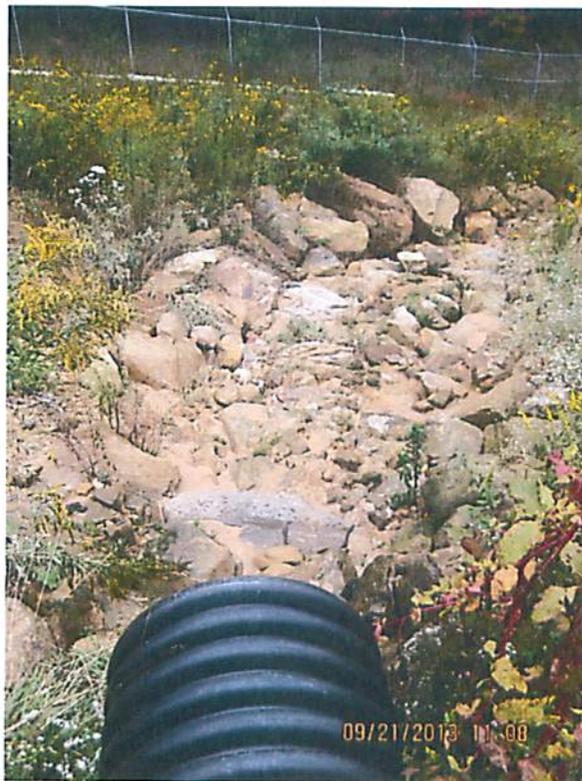


9-21-13 - MSW in diversion.



9-21-13 - Diversion turns to rock armored gutter on the fill of a closed cell.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-21-13 - Under-drain pipe at top of diversion. Sediment noted in rock gutter appears to be coming from pipe. No apparent erosion noted in rock armored section of diversion.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-21-13 - Staining inside under-drain pipe indicates that sediment laden water has been present in the discharge.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-21-13 - Under-drain pipe for a closed cell has been tied into new cell construction.



9-21-13 - Under-drain for new cell was tied into closed cell under-drain system. This is a direct discharge to the stream/river until the detection layer is in place. Approximate land disturbance size of 4 acres.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-24-13 – Inlet for under-drain. This is a direct discharge to the stream/river until the detection layer is in place.

Greenbrier County Solid Waste Authority Consent Order Picture Log
9-20-13, 9-21-13 and 9-24-13



9-24-13 – Overall view of new cell construction at GCSWA landfill.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Greenbrier County SWA Receiving Stream: UT of and Greenbrier River

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.

1)	Potential for Harm Factor	Factor Range	FOF#											
			3.a.	3.b.										
a)	Amount of Pollutant Released	1 to 3	3	3										
b)	Toxicity of Pollutant	0 to 3	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	3	3										
Average Potential for Harm Factor			1.8	1.8	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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.

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		\$1,920
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			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$1,950
Penalty =			\$11,550

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:	