



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: City of Logan
Hon. Serafino Nolletti, Mayor
219 Dingess Street
Logan, WV 25601

DATE: November 24, 2014

ORDER NO.: 8157

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 City of Logan.

FINDINGS OF FACT

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

1. City of Logan operates a combined wastewater collection system and a 0.53 million gallons per day oxidation ditch wastewater treatment plant located in Logan, Logan County, West Virginia. City of Logan was reissued WV/NPDES Water Pollution Control Permit No. WV0033821 on July 25, 2012.
2. On February 13, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of City of Logan's WV/NPDES permit and WV Legislative Rules were observed and documented:
 - a. Section C.19 - City of Logan allowed a domestic sewage discharge from a manhole located between the Oaks Plaza and the WVDEP Field Office. WVDEP personnel were advised by a representative of City of Logan that this discharge had been ongoing for four (4) months due to a lift station which had become inoperable as a

result of a blocked force main. Any discharge other than a permitted treatment system outfall is expressly prohibited.

- b. Appendix A.IV.1 and 47CSR11 Section 2.2.a – City of Logan failed to provide immediate notification of the bypass to the Emergency Notification Number.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W13-23-001-EJP was issued to City of Logan.

3. On February 19, 2013, WVDEP issued Order No. 7806 to City of Logan in response to the aforementioned violations.
4. On July 16, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of City of Logan's WV/NPDES permit were observed and documented:
 - a. Section C.5 – City of Logan failed to submit the following Discharge Monitoring Reports (DMRs) within twenty (20) days after the reporting period: April 2012, December 2012, March 2013, April 2013, May 2013, and June 2013.
 - b. Section C.15 – City of Logan failed to submit a Plan of Action after the average monthly flow reported on DMRs reached or exceeded ninety percent (90%) of the average design flow (0.48 million gallons per day).
 - c. Section A.001 – City of Logan exceeded the following average monthly effluent discharge limitations: Total Kjeldahl Nitrogen (TKN) during March, June, August, and October 2012; Biochemical Oxygen Demand (BOD) percent removal during May 2012; and Total Recoverable Copper during February 2012.
 - d. Appendix A.II.1 – City of Logan failed to properly operate and maintain all facilities and systems of control. Specifically, the bar screen contained debris due to an inoperable rake system motor, the scum removal drain was not lowered to remove scum, and dewatering grit was piled on top of the grit removal facility.

As a result of the aforementioned violations, NOV Nos. W13-23-227-MBC, W13-23-228-MBC, W13-23-229-MBC, and W13-23-230-MBC were issued to City of Logan.

5. On May 5, 2014, 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 City of Logan's WV/NPDES permit were observed and documented:
 - a. Section C.19 – City of Logan allowed a domestic sewage discharge from a manhole located between The Oaks Plaza and the WVDEP Field Office. Any discharge from any point other than a permitted treatment outfall is expressly prohibited.
 - b. Appendix A.IV.1 and 47CSR11 Section 2.2.a – City of Logan failed to give immediate notification of the aforementioned discharge to the Office of Water Resources Emergency Notification Number.
 - c. 47CSR11 Section 2.5.a – City of Logan failed to take any and all measures necessary to clean up, remove and otherwise render a spill of untreated sewage harmless to waters of the State, as evidenced by a return visit conducted by WVDEP personnel on May 14, 2014.

As a result of the aforementioned violations, NOV Nos. W14-23-037-CJN, W14-23-038-CJN, and W14-23-039-CJN were issued to City of Logan.

6. On August 29, 2014, WVDEP personnel conducted a review of facility records from the time period of May 1, 2012 through July 31, 2014. During this review, the following violations of the terms and conditions of City of Logan's WV/NPDES permit were observed:
 - a. Section B.2 – The permittee failed to submit the following DMRs within twenty (20) days after the reporting period: February, March, April, May, June, August, September, October, November, December 2013 and April, May, June, July 2014.
7. On November 21, 2014, WVDEP personnel conducted a review of facility records from the time period of May 1, 2012 through September 30, 2014. During this review, the following violations of the terms and conditions of City of Logan's WV/NPDES permit were observed:
 - a. Section A.001 – Thirty (30) exceedances of City of Logan's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-sixteen (16)
 - ii. Moderate violations-four five (5)
 - iii. Major violations-nine (9)
8. On November 19, 2014, WVDEP personnel and representatives of City of Logan 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. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. City of Logan 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 fifteen (15) days of the effective date of this Order, City of Logan shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when City of Logan 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. WV0033821 and Order No. 8157. 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 City of Logan's Legislative Rule and permit violations, City of Logan shall be assessed a civil administrative penalty of eighty-one thousand seven hundred fifty-five dollars (\$81,755) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$13,625.83 due on or before January 1, 2015.

Payment 2 in the amount of \$13,625.83 due on or before February 1, 2015.

Payment 3 in the amount of \$13,625.83 due on or before March 1, 2015.

Payment 4 in the amount of \$13,625.83 due on or before April 1, 2015.

Payment 5 in the amount of \$13,625.83 due on or before May 1, 2015.

Payment 6 in the amount of \$13,625.85 due on or before June 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. City of Logan 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, City of Logan 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, City of Logan 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 City of Logan 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, City of Logan 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 City of Logan becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and City of Logan 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 City of Logan 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 City of Logan (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 City of Logan 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 City of Logan 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 City of Logan, its successors and assigns.

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

Serafino Nolletti
Hon. Serafino Nolletti, Mayor
City of Logan

12-2-14
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

RECEIVED

DEC 29 2014

ENVIRONMENTAL
ENFORCEMENT

Table One: City of Logan DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 05/01/12 through 09/30/14						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
12/31/12	BOD	lbs./day	133	162	22%	X	-	-
6/30/14	BOD	lbs./day	133	164	23%	X	-	-
6/30/14	BOD	mg/l	30	33.7	12%	X	-	-
6/30/12	T.K.N.	mg/l	18	20.5	14%	X	-	-
8/31/12	T.K.N.	mg/l	18	23.5	31%	X	-	-
10/31/12	T.K.N.	mg/l	18	26.4	47%	-	X	-
3/31/14	T.K.N.	mg/l	18	21	17%	X	-	-
4/30/14	T.K.N.	mg/l	18	21	17%	X	-	-
6/30/14	T.K.N.	mg/l	18	21.8	21%	X	-	-
9/30/14	T.K.N.	mg/l	18	23.4	30%	X	-	-
12/31/12	T.K.N.	lbs./day	80	112	40%	X	-	-
3/31/14	T.K.N.	lbs./day	80	122.6	53%	-	X	-
6/30/14	T.K.N.	lbs./day	80	106	33%	X	-	-
5/31/12	Fecal Coliform	Cnts/100m	200	441	121%	-	X	-
12/31/12	Fecal Coliform	Cnts/100m	200	63000	31400%	-	-	X
6/30/14	Fecal Coliform	Cnts/100m	200	32000	15900%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - 05/01/12 through 09/30/14						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
5/31/12	Fecal Coliform	Cnts/100m	400	441000	110150%	-	-	X
12/31/12	Fecal Coliform	Cnts/100m	400	63000	15650%	-	-	X
6/30/14	Fecal Coliform	Cnts/100m	400	32000	7900%	-	-	X

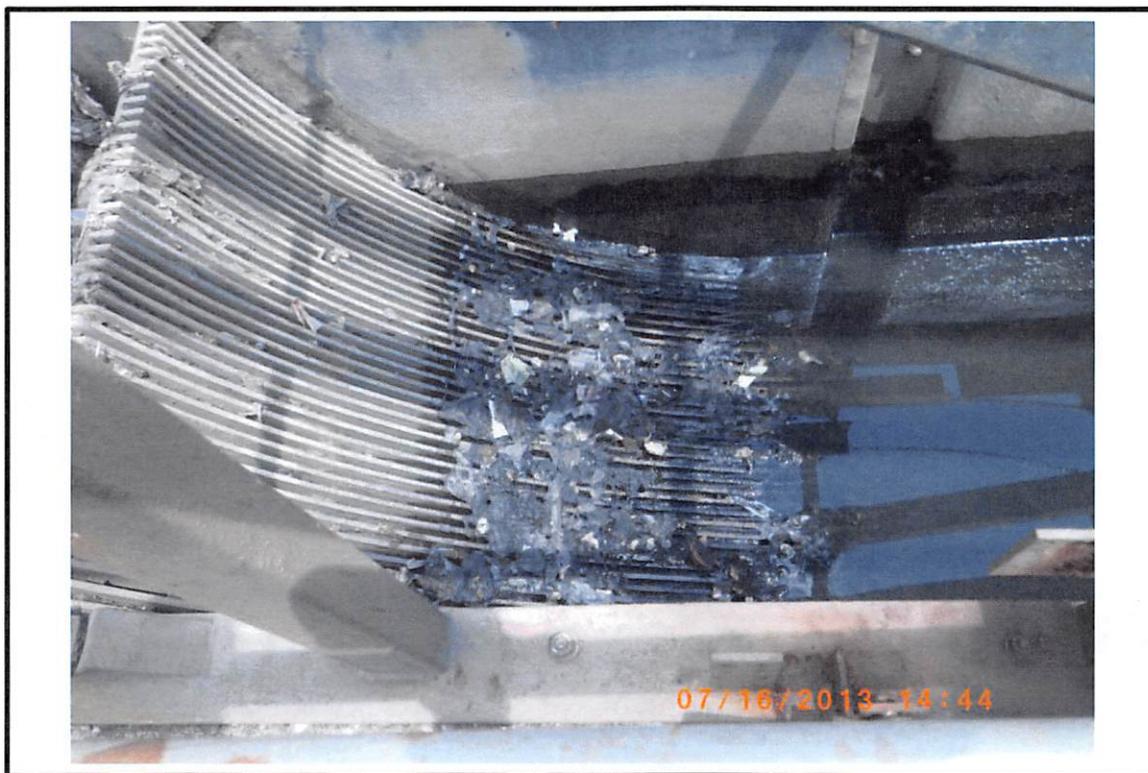
Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - 05/01/12 through 09/30/14						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
5/31/12	BOD	mg/l	85.0	77.0	9.4%	X	-	-
6/30/12	BOD	mg/l	85.0	1.0	98.8%	-	-	X
3/31/14	BOD	mg/l	85.0	40.0	52.9%	-	X	-
4/30/14	BOD	mg/l	85.0	10.0	88.2%	-	-	X
5/31/14	BOD	mg/l	85.0	60.0	29.4%	X	-	-
8/31/14	BOD	mg/l	85.0	50.0	41.2%	-	X	-
9/30/14	BOD	mg/l	85.0	80.0	5.9%	X	-	-
2/28/13	Suspended Solids	mg/l	85.0	76.0	10.6%	X	-	-
3/31/14	Suspended Solids	mg/l	85.0	2.0	97.6%	-	-	X
4/30/14	Suspended Solids	mg/l	85.0	11.0	87.1%	-	-	X
5/31/14	Suspended Solids	mg/l	85.0	78.0	8.2%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	16	5	9

Photo Attachment



2/13/2013 - Domestic sewage discharge from a manhole located between the Oaks Plaza and the WVDEP Field Office.



7/16/2013 - Bar screen with minor debris due to motor for the rake system being inoperable

Photo Attachment



7/16/2013 - Scum removal drain not lowered to remove scum.



7/16/2013 - Grit dewatering on top of the grit removal facility.

Photo Attachment



5/5/2014 - Domestic sewage discharge from a manhole located between the Oaks Plaza and the WVDEP Field Office.



5/5/2014 - Domestic sewage discharge from a manhole located between the Oaks Plaza and the WVDEP Field Office.

Photo Attachment



5/5/2014 - Domestic sewage discharge from a manhole located between the Oaks Plaza and the WVDEP Field Office.



6/4/2013 - Domestic sewage discharge from a manhole located between the Oaks Plaza and the WVDEP Field Office.

Photo Attachment



6/4/2014 - Domestic sewage discharge from a manhole located between the Oaks Plaza and the WVDEP Field Office.



6/4/2014 - Domestic sewage discharge from a manhole located between the Oaks Plaza and the WVDEP Field Office.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: City of Logan Receiving Stream: Guyandotte

Treatment System Design Maximum Flow: 0.53 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	4.b	4.d	5.a	5.b	5.c	6.a	7.a.i	7.a.ii	7.a.iii			
a)	Amount of Pollutant Released	1 to 3	2	2	1	1	2	2	2	1	1	1	1			
b)	Toxicity of Pollutant	0 to 3	1	1	0	1	1	1	1	0	1	1	1			
c)	Sensitivity of the Environment	0 to 3	1	1	0	1	1	1	1	0	1	1	1			
d)	Length of Time	1 to 3	2	2	1	1	3	3	3	1	1	1	1			
e)	Actual Exposure and Effects thereon	0 to 3	1	1	0	1	1	1	1	0	1	1	1			
Average Potential for Harm Factor			1.4	1.4	0.4	1	1.6	1.6	1.6	0.4	1	1	1	No	No	
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	3	3	2	3	3	3	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.

		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	Major	\$4,400	1	\$4,400
2.b	Moderate	Major	\$4,400	1	\$4,400
4.b	Minor	Major	\$1,700	1	\$1,700
4.d	Minor	Moderate	\$1,500	1	\$1,500
5.a	Moderate	Major	\$4,600	1	\$4,600
5.b	Moderate	Major	\$4,600	1	\$4,600
5.c	Moderate	Major	\$4,600	1	\$4,600
6.a	Minor	Major	\$1,700	14	\$23,800
7.a.i	Minor	Minor	\$1,000	4	\$4,000
7.a.ii	Minor	Moderate	\$1,500	3	\$4,500
7.a.iii	Minor	Major	\$2,000	3	\$6,000
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
Total Base Penalty					\$64,100

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 -	10		\$6,410
6.2.b.4 - Compliance/noncompliance history	25		\$16,025
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,600		\$1,600
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	(\$6,410)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$17,655
Penalty =			\$81,755

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$1,600
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	\$1,600
Comments: Avoided cost of submitting DMRs (\$200 x 8 months).	