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

August 15, 2013

Miracle Meadows School
Attn: Gayle Clark
Rt. 1, Box 289B
Salem, WV 26246

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7032 6249 3787

RE: Violation of Chapter 22, Article 11 of the WV State Code

Dear Ms. Clark:

Enclosed is 2nd revised CONSENT ORDER NUMBER 7793 dated August 15, 2013. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Miracle Meadows School violating Chapter 22, Article 11 of the WV State Code at its facility located in Salem, Harrison County, West Virginia. This revision has been updated to include 4th Qtr 2012 and 1st Qtr 2013 Discharge Monitoring Report exceedances, and it is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer, and your submittal of financial documents, which were used to evaluate your ability to pay a civil administrative penalty. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto
Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits (via e-mail)
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Brad Swiger, Environmental Inspector Supervisor, EE/WW (via e-mail)
Melisa Powers, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

Received
AUG 2 8 2013
WV Dep
DWWM/Env [illegible] SF & HW

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

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: Miracle Meadows School
Attn: Gayle Clark
Rt. 1 Box 289B
Salem, WV 26246

DATE: August 15, 2013

ORDER NO.: 7793

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 Miracle Meadows School (hereinafter "MMS").

FINDINGS OF FACT

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

1. MMS operates a boarding school located near Salem, Harrison County, West Virginia. MMS was issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550972, on September 30, 1999. The permit was reissued on July 25, 2005 and July 21, 2011.

2. On May 24, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of MMS' WV/NPDES permit were observed and documented:

   a. Section F.1 - The aeration basin and clarifier were pumped the morning of the inspection. The aeration diffusers were operational. However, the skimmer was not operating due to low volume in the clarifier. There was no discharge over the weir to the dosing tank because of low volume. Sand filter one (1) had cracks in the bypass pipe. Sand filter two (2) was full of solids. There was no discharge through the UV unit or through Outfall 001 because of low volume in the plant.

b. Section A.3 - A review of discharge monitoring reports (DMRs) from 2nd quarter 2010 to 2nd quarter 2012 revealed forty-seven (47) exceedances of discharge limits for BOD5, Ammonia Nitrogen, Total Suspended Solids and Fecal Coliform.

As a result of the aforementioned violations, Notice of Violation (NOV) No. NW-KAP-05242012-001 was issued to MMS.

3. On November 14, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of MMS' WV/NPDES permit were observed and documented:

   a. Section F.1 - The sewage treatment plant lid was broken. The gate to the plant was unlocked. There was inadequate mixing in the aeration basin. There was excessive scum on the clarifier. The skimmer in the clarifier was not operable. Sand-filter two (2) was clogged and ponding. Untreated effluent was leaking through the sand filter walls onto and into the ground. Contaminated sand filter media was being stored on the ground outside of sand filter one (1).
   b. Section A.3 - A review of DMRs for the 2nd and 3rd quarters of 2012 revealed twelve (12) exceedances of the discharge limitations for BOD5, Ammonia Nitrogen, Total Suspended Solids, Fecal Coliform and Dissolved Oxygen.

   As a result of the aforementioned violations, NOV Nos. NW-MAP-111412-001 and NW-MAP-111412-002 were issued to MMS.

4. On May 16, 2013, WVDEP personnel conducted a review of facility records from the time period of 1st quarter 2010 through 1st Quarter 2013. During this review, the following violations of the terms and conditions of MMS's WV/NPDES permit were observed:

   a. Section A.3 – Sixty-eight (68) exceedances of MMS' permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
      i. Minor violations – Seventeen (17)
      ii. Moderate violations –Twenty-three (23)
      iii. Major violations –Twenty-eight (28)

5. On May 16, 2013, WVDEP personnel and representatives of MMS met to discuss the terms and conditions of this Order.

6. On August 6, 2013, MMS submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated MMS' ability to pay a civil administrative penalty.

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

OTHER PROVISIONS

1. MMS 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, MMS 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, MMS 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 MMS 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, MMS 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 MMS 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 MMS 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 MMS (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 MMS 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 MMS 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 MMS, its successors and assigns.

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

Gayle Clark

Gayle Clark
Miracle Meadows School

8-21-13
Date

Public Notice begin:

Date

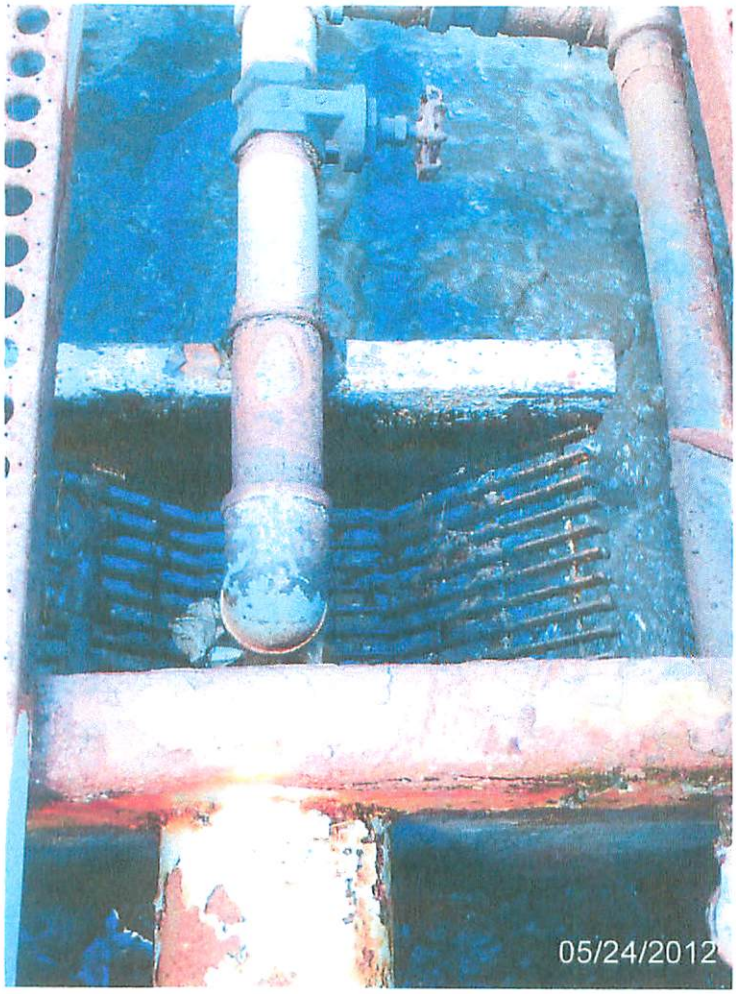
Public Notice end:

Date

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

Date

revised September 2011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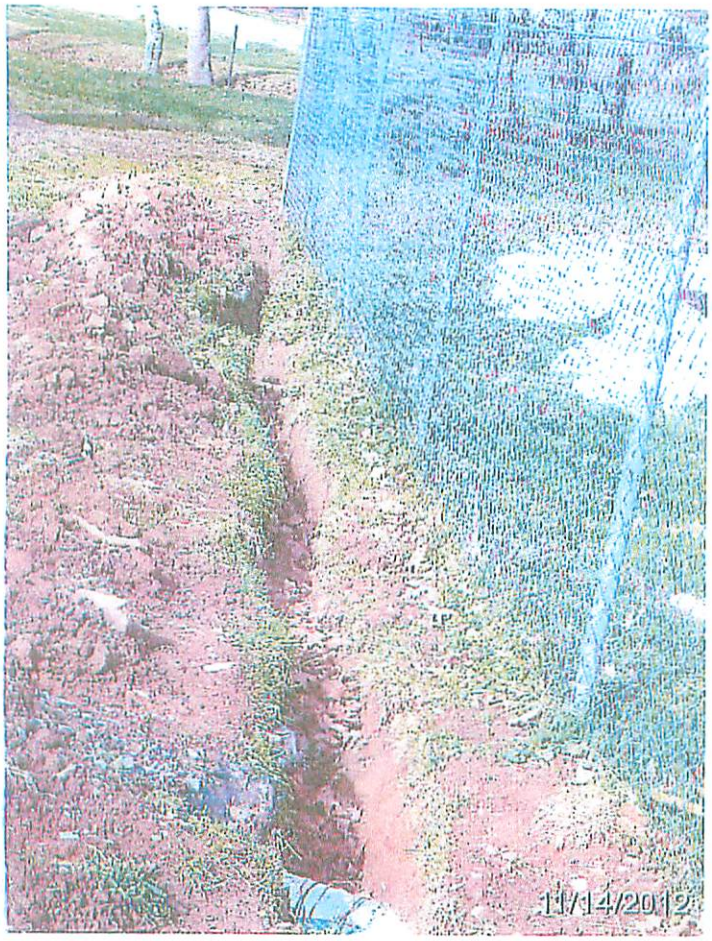
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Table One:
Miracle Meadows DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 1st Qtr 2010 through 3rd Qtr 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
1st Qtr 2010	**BOD**	mg/l	10	**124.00**	1140%	-	-	X
1st Qtr 2010	**TSS**	mg/l	30	**66**	120%	-	X	-
1st Qtr 2010	**NH3-N**	mg/l	6	**16.20**	170%	-	X	-
1st Qtr 2010	**Fecal**	Cnts/100	200	**60000**	29900%	-	-	X
2nd Qtr 2010	**BOD**	mg/l	5.00	**133.00**	2560%	-	-	X
2nd Qtr 2010	**TSS**	mg/l	30.00	**100.00**	233%	-	X	-
2nd Qtr 2010	**NH3-N**	mg/l	3.00	**28.90**	863%	-	-	X
3rd Qtr 2010	**BOD**	mg/l	5.00	**100.00**	1900%	-	-	X
3rd Qtr 2010	**TSS**	mg/l	30.00	**40.00**	33%	X	-	-
3rd Qtr 2010	**NH3-N**	mg/l	3.00	**28.40**	847%	-	-	X
4th Qtr 2010	**BOD**	mg/l	10.00	**34.00**	240%	-	X	-
4th Qtr 2010	**NH3-N**	mg/l	6.00	**12.70**	112%	-	X	-
4th Qtr 2010	**Fecal**	Cnts/100	200.00	**6000.00**	2900%	-	-	X
1st Qtr 2011	**BOD**	mg/l	10.00	**47.00**	370%	-	-	X
1st Qtr 2011	**TSS**	mg/l	30.00	**86.00**	187%	-	X	-
1st Qtr 2011	**NH3-N**	mg/l	6.00	**13.90**	132%	-	X	-
1st Qtr 2011	**Fecal**	Cnts/100	200.00	**6000.00**	2900%	-	-	X
4th Qtr 2011	**BOD**	mg/l	10.00	**20.00**	100%	-	X	-
4th Qtr 2011	**TSS**	mg/l	30.00	**70.00**	133%	-	X	-
4th Qtr 2011	**NH#-N**	mg/l	6.00	**10.90**	82%	-	X	-
4th Qtr 2011	**Fecal**	Cnts/100	200.00	**6000.00**	2900%	-	-	X
1st Qtr 2012	**BOD**	mg/l	10.00	**31.00**	210%	-	X	-
1st Qtr 2012	**TSS**	mg/l	30.00	**54.00**	80%	-	X	-
1st Qtr 2012	**NH3-N**	mg/l	6.00	**14.00**	133%	-	X	-
1st Qtr 2012	**Fecal**	Cnts/100	200.00	**6000.00**	2900%	-	-	X
2nd Qtr 2012	**BOD**	mg/l	5.00	**47.50**	850%	-	-	X
2nd Qtr 2012	**TSS**	mg/l	30.00	**42.00**	40%	X	-	-
2nd Qtr 2012	**NH3-N**	mg/l	3.00	**20.60**	587%	-	-	X
2nd Qtr 2012	**Fecal**	Cnts/100	200.00	**20000.00**	9900%	-	-	X
2nd Qtr 2012	**DO**	mg/l	6.00	**4.63**	-23%	X	-	-
3rd Qtr 2012	**NH3-N**	mg/l	3.00	**3.66**	22%	X	-	-
3rd Qtr 2012	**Fecal**	Cnts/100	200.00	**6000.00**	2900%	-	-	X
3rd Qtr 2012	**DO**	mg/l	6.00	**3.25**	-46%	X	-	-
4th Qtr 2012	**Fecal**	Cnts/100	200.00	**1500.00**	650%	-	-	X
1st Qtr 2013	**NH3-N**	mg/l	6.00	**16.60**	177%	-	X	-
1st Qtr 2013	**Fecal**	Cnts/100	200.00	**6000.00**	2900%	-	-	X
1st Qtr 2013	**BOD**	mg/l	10.00	**45.40**	354%	-	-	X

Table One:
Miracle Meadows DMR Exceedance Summary

Outlet 001 DMR Exceedances - MAX. DAILY - 1st Qtr 2010 through 3rd Qtr 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
1st Qtr 2010	**BOD**	mg/l	20	**124**	520%	-	X	-
1st Qtr 2010	**TSS**	mg/l	60	**66**	10%	X	-	-
1st Qtr 2010	**NH3-N**	mg/l	12	**16.2**	35%	X	-	-
1st Qtr 2010	**Fecal**	Cnts/100	400	**60000**	14900%	-	-	X
2nd Qtr 2010	**BOD**	mg/l	10	**133**	1230%	-	-	X
2nd Qtr 2010	**TSS**	mg/l	60	**100**	67%	X	-	-
2nd Qtr 2010	**NH3-N**	mg/l	6	**28.9**	382%	-	X	-
2nd Qtr 2010	**Fecal**	Cnts/100	400	**1200**	200%	-	X	-
3rd Qtr 2010	**BOD**	mg/l	10	**100**	900%	-	-	X
3rd Qtr 2010	**NH3-N**	mg/l	6	**28.4**	373%	-	X	-
4th Qtr 2010	**BOD**	mg/l	20	**34**	70%	X	-	-
4th Qtr 2010	**NH3-N**	mg/l	12	**12.7**	6%	X	-	-
4th Qtr 2010	**Fecal**	Cnts/100	400	**6000**	1400%	-	-	X
1st Qtr 2011	**BOD**	mg/l	20	**47**	135%	-	X	-
1st Qtr 2011	**TSS**	mg/l	60	**86**	43%	X	-	-
1st Qtr 2011	**NH3-N**	mg/l	12	**13.9**	16%	X	-	-
1st Qtr 2011	**Fecal**	Cnts/100	400	**6000**	1400%	-	-	X
4th Qtr 2011	**TSS**	mg/l	60	**70**	17%	X	-	-
4th Qtr 2011	**Fecal**	Cnts/100	400	**6000**	1400%	-	-	X
1st Qtr 2012	**BOD**	mg/l	20	**31**	55%	X	-	-
1st Qtr 2012	**NH3-N**	mg/l	12	**14**	17%	X	-	-
1st Qtr 2012	**Fecal**	Cnts/100	400	**6000**	1400%	-	-	X
2nd Qtr 2012	**BOD**	mg/l	10	**47.5**	375%	-	X	-
2nd Qtr 2012	**NH3-N**	mg/l	6	**20.6**	243%	-	X	-
2nd Qtr 2012	**Fecal**	Cnts/100	400	**20000**	4900%	-	-	X
3rd Qtr 2012	**Fecal**	Cnts/100	400	**6000**	1400%	-	-	X
4th Qtr 2012	**Fecal**	Cnts/100	400	**1500**	275%	-	X	-
1st Qtr 2013	**BOD**	mg/l	20	**45.4**	127%	-	X	-
1st Qtr 2013	**NH3-N**	mg/l	12	**16.6**	38%	X	-	-
1st Qtr 2013	**Fecal**	Cnts/100	400	**6000**	1400%	-	-	X

Outlet 00X DMR Exceedances - D.O. INSTANTANEOUS. MIN. - Month Day, Year through Month I						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
1st Qtr 2013	**D.O.**	mg/l	6.0	4.1	31.7%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	17	**23**	**28**

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Miracle Meadow School **Receiving Stream:** UT of Patterson Creek

Treatment System Design Maximum Flow: 0.005 **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**	**3a**	**4ai**	**4aii**	**4aiii**									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	1	1									
d)	Length of Time	1 to 3	1	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1									
	Average Potential for Harm Factor		1	1	1	1	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	2	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.

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
3a	Minor	Moderate	$1,500	1	$1,500
4ai	Minor	Minor	$1,000	7	$7,000
4aii	Minor	Moderate	$1,500	8	$12,000
4aiii	Minor	Major	$2,000	10	$20,000
0	FALSE	FALSE	FALSE		$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
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
Total Base Penalty					$40,500

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		$4,050
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	($16,200)
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	($4,050)
6.2.b.3 - Cooperation with the Secretary		10	($4,050)
6.2.b.5 - Ability to Pay		41	($16,605)
Penalty Adjustments			**($36,825)**
Penalty =			**$3,675**

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: