



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
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Mountain Top PSD
Attn: Douglas Lyons
P.O. Box 236
Mt. Storm, WV 26739

DATE: June 3, 2016
ORDER NO.: 8556

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 Mountain Top PSD.

FINDINGS OF FACT

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

1. Mountain Top PSD operates waste water treatment facilities located in Bayard, Grant County and Elk Garden, Mineral County, West Virginia. Mountain Top PSD was reissued WV/NPDES Water Pollution Control Permit No. WV0101524 on September 30, 2011.
2. On April 3, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following section of the terms and conditions of Mountain Top PSD's WV/NPDES permit were observed and documented:
 - a. Section A.003-Mountain Top PSD exceeded discharge limitations.

As a result of the aforementioned violations, Notice of Violation (NOV) No. WR-015-029-024-216 was issued to Mountain Top PSD.

3. On March 28, 2016, WVDEP personnel conducted a review of facility records from the time period of March 1, 2014 through February 29, 2016. During this review, the following violations of the terms and conditions of Mountain Top PSD's WV/NPDES permit were observed:
 - a. Section A.001 – Forty-four (44) exceedances of Mountain Top PSD's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-eighteen (18)
 - ii. Moderate violations-twenty-six (26)
 - b. Section A.003 – One hundred nine (109) exceedances of Mountain Top PSD's permit parameters were observed and documented (Table 2). These exceedances can be further defined as:
 - i. Minor violations-thirty-seven (37)
 - ii. Moderate violations-fifty-four (54)
 - iii. Major violations-eighteen (18)
4. On April 27, 2016, WVDEP personnel met with representatives from Mountain Top PSD to discuss the terms and conditions of the Order.
5. On May 3, 2016, Mountain Top PSD submitted financial records to WVDEP. The information was used to perform an economic analysis which evaluated Mountain Top PSD's ability to pay a civil administrative penalty.

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. Mountain Top PSD shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of the effective date of this Order, Mountain Top PSD shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mountain Top PSD will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0101524 and Order No. 8556. The plan of corrective action 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 Mountain Top PSD's permit violations, Mountain Top PSD shall be assessed a civil administrative penalty of two thousand five hundred dollars (\$2,500) 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 \$1,250 due on or before August 1, 2016.

Payment 2 in the amount of \$1,250 due on or before September 1, 2016.

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:**

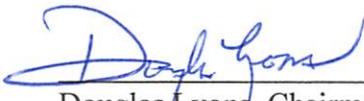
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

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



Douglas Lyons, Chairman
Mountain Top PSD

6/8/16

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

Table 1: Mountain Top PSD Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - March/2014 through Feb/2016						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
03/2014	Copper, Total Recoverabl	mg/l	0.005	0.01	100%	-	X	-
03/2014	Zinc, Total Recoverable	mg/l	0.04	0.077	93%	-	X	-
04/2014	Copper, Total Recoverabl	mg/l	0.005	0.01	100%	-	X	-
04/2014	Zinc, Total Recoverable	mg/l	0.04	0.07	75%	-	X	-
05/2014	Zinc, Total Recoverable	mg/l	0.04	0.076	90%	-	X	-
06/2014	Zinc, Total Recoverable	mg/l	0.04	0.051	28%	X	-	-
08/2014	Zinc, Total Recoverable	mg/l	0.04	0.072	80%	-	X	-
09/2014	Zinc, Total Recoverable	mg/l	0.04	0.0676	69%	-	X	-
10/2014	Copper, Total Recoverabl	mg/l	0.005	0.009	80%	-	X	-
10/2014	Zinc, Total Recoverable	mg/l	0.04	0.064	60%	-	X	-
11/2014	Copper, Total Recoverabl	mg/l	0.005	0.016	220%	-	X	-
11/2014	Zinc, Total Recoverable	mg/l	0.04	0.076	90%	-	X	-
01/2015	Copper, Total Recoverabl	mg/l	0.005	0.007	40%	X	-	-
02/2015	Copper, Total Recoverabl	mg/l	0.005	0.0056	12%	X	-	-
03/2015	Zinc, Total Recoverable	mg/l	0.04	0.05	25%	X	-	-
04/2015	Copper, Total Recoverabl	mg/l	0.005	0.011	120%	-	X	-
04/2015	Zinc, Total Recoverable	mg/l	0.04	0.056	40%	X	-	-
05/2015	Copper, Total Recoverabl	mg/l	0.005	0.011	120%	-	X	-
05/2015	Zinc, Total Recoverable	mg/l	0.04	0.085	113%	-	X	-
06/2015	Zinc, Total Recoverable	mg/l	0.04	0.063	58%	-	X	-
08/2015	Copper, Total Recoverabl	mg/l	0.005	0.0082	64%	-	X	-
08/2015	Zinc, Total Recoverable	mg/l	0.04	0.048	20%	X	-	-
09/2015	Zinc, Total Recoverable	mg/l	0.04	0.093	133%	-	X	-
10/2015	Copper, Total Recoverabl	mg/l	0.005	0.0075	50%	-	X	-
10/2015	Zinc, Total Recoverable	mg/l	0.04	0.058	45%	-	X	-
11/2015	Copper, Total Recoverabl	mg/l	0.005	0.011	120%	-	X	-
11/2015	Zinc, Total Recoverable	mg/l	0.04	0.079	98%	-	X	-
12/2015	Copper, Total Recoverabl	mg/l	0.005	0.01	100%	-	X	-
01/2016	Copper, Total Recoverabl	mg/l	0.005	0.012	140%	-	X	-
01/2016	Zinc, Total Recoverable	mg/l	0.04	0.083	108%	-	X	-
02/2016	Copper, Total Recoverabl	mg/l	0.005	0.012	140%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - March/2014 through Feb/2016						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
03/2014	Flow	mgd	0.05	0.06	20%	X	-	-
06/2014	Flow	mgd	0.05	0.1	100%	X	-	-
06/2014	Flow	mgd	0.05	0.1	100%	X	-	-
08/2014	Flow	mgd	0.05	0.06	20%	X	-	-
10/2014	Flow	mgd	0.05	0.11	120%	-	X	-
11/2014	Flow	mgd	0.05	0.09	80%	X	-	-
11/2014	Copper, Total Recoverabl	mg/l	0.014	0.016	14%	X	-	-
02/2015	Flow	mgd	0.05	0.08	60%	X	-	-
03/2015	Flow	mgd	0.05	0.08	60%	X	-	-
04/2015	Flow	mgd	0.05	0.09	80%	X	-	-
06/2015	Flow	mgd	0.05	0.07	40%	X	-	-
11/2015	Flow	mgd	0.05	0.06	20%	X	-	-
02/2016	Flow	mgd	0.05	0.08	60%	X	-	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		18	26	0

Table 2: Mountain Top PSD DMR Exceedance Summary

Outlet 003 DMR Exceedances - AVG. MONTHLY - March/2014 through Feb/2016						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
03/2014	Nitrogen, Kjeldahl Total	lbs/day	0.83	1.29	55%	-	X	-
03/2014	Nitrogen, Kjeldahl Total	mg/l	2	12.82	541%	-	-	X
03/2014	Zinc, Total Recoverable	mg/l	0.04	0.07	75%	-	X	-
04/2014	Nitrogen, Kjeldahl Total	mg/l	2	7.11	256%	-	X	-
05/2014	Nitrogen, Kjeldahl Total	mg/l	2	12	500%	-	-	X
05/2014	Copper, Total Recoverable	mg/l	0.005	0.006	20%	X	-	-
05/2014	Zinc, Total Recoverable	mg/l	0.04	0.062	55%	-	X	-
06/2014	Nitrogen, Kjeldahl Total	mg/l	2	4	100%	-	X	-
06/2014	Zinc, Total Recoverable	mg/l	0.04	0.07	75%	-	X	-
07/2014	Nitrogen, Kjeldahl Total	mg/l	2	5.77	189%	-	X	-
07/2014	Copper, Total Recoverable	mg/l	0.005	0.013	160%	-	X	-
07/2014	Zinc, Total Recoverable	mg/l	0.04	0.165	313%	-	-	X
08/2014	Nitrogen, Kjeldahl Total	mg/l	2	3.86	93%	-	X	-
08/2014	Copper, Total Recoverable	mg/l	0.005	0.011	120%	-	X	-
08/2014	Zinc, Total Recoverable	mg/l	0.04	0.113	183%	-	X	-
09/2014	Nitrogen, Kjeldahl Total	lbs/day	0.83	0.86	4%	X	-	-
09/2014	Nitrogen, Kjeldahl Total	mg/l	2	10.5	425%	-	-	X
09/2014	Copper, Total Recoverable	mg/l	0.005	0.0138	176%	-	X	-
09/2014	Zinc, Total Recoverable	mg/l	0.04	0.0895	124%	-	X	-
10/2014	Nitrogen, Kjeldahl Total	mg/l	2	6.27	214%	-	X	-
10/2014	Copper, Total Recoverable	mg/l	0.005	0.013	160%	-	X	-
10/2014	Zinc, Total Recoverable	mg/l	0.04	0.12	200%	-	X	-
11/2014	Nitrogen, Kjeldahl Total	mg/l	2	13	550%	-	-	X
11/2014	Copper, Total Recoverable	mg/l	0.005	0.01	100%	-	X	-
11/2014	Zinc, Total Recoverable	mg/l	0.04	0.067	68%	-	X	-
12/2014	BOD	mg/l	10	24.4	144%	-	X	-
12/2014	Suspended Solids, Total	mg/l	30	40	33%	X	-	-
12/2014	Nitrogen, Kjeldahl Total	lbs/day	0.83	3.36	305%	-	-	X
12/2014	Nitrogen, Kjeldahl Total	mg/l	2	30.1	1405%	-	-	X
12/2014	Copper, Total Recoverable	mg/l	0.005	0.012	140%	-	X	-
12/2014	Zinc, Total Recoverable	mg/l	0.04	0.045	13%	X	-	-
01/2015	Nitrogen, Kjeldahl Total	lbs/day	0.83	0.87	5%	X	-	-
01/2015	Nitrogen, Kjeldahl Total	mg/l	2	9.13	357%	-	-	X
01/2015	Copper, Total Recoverable	mg/l	0.005	0.0069	38%	X	-	-
01/2015	Zinc, Total Recoverable	mg/l	0.04	0.092	130%	-	X	-
02/2015	BOD	mg/l	10	28.6	186%	-	X	-
02/2015	Nitrogen, Kjeldahl Total	mg/l	2	35.4	1670%	-	-	X
02/2015	Copper, Total Recoverable	mg/l	0.005	0.0075	50%	-	X	-
03/2015	Nitrogen, Kjeldahl Total	lbs/day	0.83	3.45	316%	-	-	X
03/2015	Nitrogen, Kjeldahl Total	mg/l	2	8.79	340%	-	-	X
04/2015	Nitrogen, Kjeldahl Total	lbs/day	1.7	2.3	35%	X	-	-
04/2015	Nitrogen, Kjeldahl Total	mg/l	2	21	950%	-	-	X
04/2015	Copper, Total Recoverable	mg/l	0.005	0.007	40%	X	-	-
05/2015	Copper, Total Recoverable	mg/l	0.005	0.007	40%	X	-	-
05/2015	Zinc, Total Recoverable	mg/l	0.04	0.066	65%	-	X	-
06/2015	Nitrogen, Kjeldahl Total	mg/l	2	3.19	60%	-	X	-
06/2015	Copper, Total Recoverable	mg/l	0.005	0.017	240%	-	X	-

Table 2: Mountain Top PSD DMR Exceedance Summary

06/2015	Zinc, Total Recoverable	mg/l	0.04	0.126	215%	-	X	-
08/2015	Nitrogen, Kjeldahl Total	mg/l	2	3.42	71%	-	X	-
08/2015	Copper, Total Recoverable	mg/l	0.005	0.015	200%	-	X	-
08/2015	Zinc, Total Recoverable	mg/l	0.04	0.139	248%	-	X	-
09/2015	Nitrogen, Kjeldahl Total	mg/l	2	5.38	169%	-	X	-
09/2015	Copper, Total Recoverable	mg/l	0.005	0.022	340%	-	-	X
09/2015	Zinc, Total Recoverable	mg/l	0.04	0.141	253%	-	X	-
10/2015	Nitrogen, Kjeldahl Total	mg/l	2	4.82	141%	-	X	-
10/2015	Copper, Total Recoverable	mg/l	0.005	0.012	140%	-	X	-
11/2015	Nitrogen, Kjeldahl Total	mg/l	2	4.93	147%	-	X	-
11/2015	Copper, Total Recoverable	mg/l	0.005	0.023	360%	-	-	X
11/2015	Zinc, Total Recoverable	mg/l	0.04	0.185	363%	-	-	X
12/2015	Nitrogen, Kjeldahl Total	lbs/day	0.83	3.17	282%	-	X	-
12/2015	Nitrogen, Kjeldahl Total	mg/l	2	17.9	795%	-	-	X
12/2015	Copper, Total Recoverable	mg/l	0.005	0.0098	96%	-	X	-
12/2015	Zinc, Total Recoverable	mg/l	0.04	0.075	88%	-	X	-
01/2016	Copper, Total Recoverable	mg/l	0.005	0.015	200%	-	X	-
01/2016	Zinc, Total Recoverable	mg/l	0.04	0.1	150%	-	X	-
02/2016	Nitrogen, Kjeldahl Total	lbs/day	0.83	1.44	73%	-	X	-
02/2016	Copper, Total Recoverable	mg/l	0.005	0.018	260%	-	X	-
02/2016	Zinc, Total Recoverable	mg/l	0.04	0.068	70%	-	X	-

Outlet 003 DMR Exceedances - MAX. DAILY - March/2014 through Feb/2016						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
03/2014	Nitrogen, Kjeldahl Total	mg/l	4	12.82	221%	-	X	-
04/2014	Nitrogen, Kjeldahl Total	mg/l	4	7.11	78%	X	-	-
05/2014	Flow	mgd	0.05	0.07	40%	X	-	-
05/2014	Nitrogen, Kjeldahl Total	mg/l	4	12	200%	-	X	-
07/2014	Nitrogen, Kjeldahl Total	mg/l	4	5.77	44%	X	-	-
07/2014	Zinc, Total Recoverable	mg/l	0.12	0.165	38%	X	-	-
09/2014	Nitrogen, Kjeldahl Total	mg/l	4	10.5	163%	-	X	-
10/2014	Nitrogen, Kjeldahl Total	mg/l	4	6.27	57%	X	-	-
11/2014	Nitrogen, Kjeldahl Total	mg/l	4	13	225%	-	X	-
12/2014	BOD	mg/l	20	24.4	22%	X	-	-
12/2014	Nitrogen, Kjeldahl Total	lbs/day	1.7	3.36	98%	X	-	-
12/2014	Nitrogen, Kjeldahl Total	mg/l	4	30.1	653%	-	-	X
01/2015	Nitrogen, Kjeldahl Total	mg/l	4	9.13	128%	-	X	-
02/2015	BOD	mg/l	20	28.6	43%	X	-	-
02/2015	Fecal Coliform	Cnts/100m	400	1200	200%	-	X	-
02/2015	Nitrogen, Kjeldahl Total	mg/l	4	35.4	785%	-	-	X
03/2015	Flow	mgd	0.05	0.1	100%	X	-	-
03/2015	Nitrogen, Kjeldahl Total	lbs/day	1.7	3.45	103%	-	X	-
03/2015	Nitrogen, Kjeldahl Total	mg/l	4	8.79	120%	-	X	-
04/2015	Flow	mgd	0.05	0.07	40%	X	-	-
04/2015	Nitrogen, Kjeldahl Total	lbs/day	1.7	2.3	35%	X	-	-
04/2015	Nitrogen, Kjeldahl Total	mg/l	4	21	425%	-	X	-
05/2015	Flow	mgd	0.05	0.078	56%	X	-	-
06/2015	Flow	mgd	0.05	0.07	40%	X	-	-
06/2015	Copper, Total Recoverable	mg/l	0.014	0.017	21%	X	-	-

Table 2: Mountain Top PSD DMR Exceedance Summary

06/2015	Zinc, Total Recoverable	mg/l	0.12	0.126	5%	X	-	-
08/2015	Copper, Total Recoverable	mg/l	0.014	0.015	7%	X	-	-
08/2015	Zinc, Total Recoverable	mg/l	0.12	0.139	16%	X	-	-
09/2015	Nitrogen, Kjeldahl Total	mg/l	4	5.38	35%	X	-	-
09/2015	Copper, Total Recoverable	mg/l	0.014	0.022	57%	X	-	-
09/2015	Zinc, Total Recoverable	mg/l	0.12	0.141	18%	X	-	-
10/2015	Nitrogen, Kjeldahl Total	mg/l	4	4.82	21%	X	-	-
11/2015	Nitrogen, Kjeldahl Total	mg/l	4	4.93	23%	X	-	-
11/2015	Copper, Total Recoverable	mg/l	0.014	0.023	64%	X	-	-
11/2015	Zinc, Total Recoverable	mg/l	0.12	0.185	54%	X	-	-
12/2015	Nitrogen, Kjeldahl Total	lbs/day	1.7	3.17	86%	X	-	-
12/2015	Nitrogen, Kjeldahl Total	mg/l	4	17.9	348%	-	X	-
01/2016	Copper, Total Recoverable	mg/l	0.014	0.015	7%	X	-	-
02/2016	Flow	mgd	0.05	0.13	160%	-	X	-
02/2016	Copper, Total Recoverable	mg/l	0.014	0.018	29%	X	-	-

Outlet 003 Exceedances - Minimum 85% Removal - AVG. MONTHLY - March/2014 through Feb/2016						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
						10/2014	Suspended Solids	mg/l

Outlet 003 Totals		Degree of non-compliance		
		Min	Mod	Maj
		37	54	18

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Mountain Top PSD

Receiving Stream:

Treatment System Design Maximum Flow: 0.11 MGD

Treatment System Actual Average Flow: 0.038 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			3ai	3aii	3bi	3bii	3biii								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1								
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	1								
Average Potential for Harm Factor			1	1	1	1	1	No							
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	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.

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)		10	(\$21,000)
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	(\$21,000)
6.2.b.3 - Cooperation with the Secretary		10	(\$21,000)
6.2.b.5 - Ability to Pay		68.824	(\$144,530)
Penalty Adjustments			(\$207,500)
Penalty =			\$2,500

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: Economic benefit not warranted.	