



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: Jeffrey V. Ricottilli, Pres
Ricottilli Post and Rail
P.O. Box 929
Belington, WV 26250

DATE: November 17, 2011

ORDER NO.: 7163

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 Ricottilli Fencing of WV (hereinafter "Ricottilli").

FINDINGS OF FACT

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

1. Ricottilli operates a Rail and Post Mill located in the Belington Industrial Park, Barbour County, West Virginia. Ricottilli was issued WV/NPDES Water Pollution Control Permit No. WV0111457/WVG610427 on November 22, 1994. This permit was reissued on August 13, 2001 and July 22, 2005, with an expiration date of March 31, 2009.
2. Inspections performed from December 12, 2001 through May 28, 2004 by West Virginia Department of Environmental Protection (WVDEP) personnel revealed a consistent pattern of violations of its permit and/or WV Legislative Rules.
3. On November 9, 2004, WVDEP personnel met with Ricottilli in a pre-enforcement meeting to discuss the subject of non-compliance at its Belington facility. The following issues were discussed:
 - a. Ricottilli would submit a plan of action for its facility.

Promoting a healthy environment.

- b. Exceedances of threshold values for storm water were suspected to be the result of spring and storm water flowing through waste wood storage piles.
 - c. Wood waste piles should be removed to prevent and control contamination of surface waters.
 - d. Spring and storm water drainage would be diverted around the work area to reduce contact with wood waste, saw dust, fluids and other sources of contamination.
4. On February 2, 2005, Ricottilli submitted a Water Quality Improvement Plan. This plan had specific actions Ricottilli planned to perform with projected dates of completion. Although Ricottilli made progress towards achieving the goal of removing wood waste from the ground and diverting spring and stormwater around the work area, these goals were never completely achieved.
5. By correspondence dated February 28, 2005, WVDEP accepted the plan submitted by Ricottilli with the exception to expedite the time to write housekeeping guidelines from October 25, 2005 to April 1, 2005.
6. On July 8, 2005, WVDEP personnel conducted an inspection at Ricottilli and documented the following:
 - a. Two loads of rotten logs, 44 bundles and three trailer loads of slabs removed from site.
 - b. Screens purchased for tub grinder, but not installed.
 - c. Purchase of a shaker screen, but not in service.
 - d. Sawdust around outside beltway had been cleaned to concrete.
 - e. First half sampling for 2005 had been completed.
7. On October 17, 2005, WVDEP personnel conducted an inspection at Ricottilli and documented the following:
 - a. Diversion ditch for diverting spring water is creating leachate when saturated.
 - b. Diversion ditch to control flow through sawdust is 90% complete, but behind schedule.
 - c. The culverts had been replaced.
 - d. System to place sawdust in trailers was behind schedule.
 - e. Shaker screens and tub grinder screens were not installed.
8. On January 20, 2006, WVDEP personnel conducted an inspection at Ricottilli and documented the following:
 - a. Shaker screens were not installed.
 - b. Sawdust is stored on the ground, system to place sawdust in trailers was behind schedule.
 - c. Storm water thresholds had been exceeded for second half of 2005 for COD and TSS.
 - d. Housekeeping guidelines had not been established as proposed by the submitted plan.

9. On October 19, 2006 the Division of Water and Waste Management issued Order 5983 with the following Order of Compliance:
 - a. By January 19th 2007, Ricottilli shall place all wood waste within a system to prevent contact with all sources of groundwater, surface water and precipitation.
 - b. By February 19th 2007, Ricottilli shall remove all saw dust and other wood waste from the ground in the area affected by the natural spring.

10. On June 27, 2007 WVDEP personnel conducted an inspection at Ricottilli and documented the following:
 - a. All of the sawdust and scrap wood was processed through a wood chipper and was placed directly onto a trailer.
 - b. The spring water was not completely diverted around the work area.
 - c. Sampling and Discharge Monitoring Report (DMR's) submissions were not performed in 2006, a violation of its permit section A.2. Notice of Violation No. NW-I-SW-062707-01 was issued.

11. On July 28, 2008 WVDEP personnel conducted an inspection at Ricottilli and documented the following:
 - a. Ricottilli was not in compliance with Order No. 5983.
 - b. The spring water was not completely diverted around the work area.
 - c. The first half 2008 sampling and DMR reporting had not been performed or submitted.
 - d. Ricottilli performed the first half 2007 sampling and submitted it as the 2nd half 2007 DMR. Notice of Violation No. NW-I-SW-072808-01 was issued for failing to comply with sampling frequency, a violation of its permit section A.2.

12. On July 28, 2010 WVDEP personnel conducted a Compliance Evaluation inspection at Ricottilli and documented the following:
 - a. Ricottilli was not in compliance with Order No. 5983.
 - b. The primary settling sumps were full of solids.
 - c. Wood waste was piled on the ground throughout the facility.
 - d. No work performed on diverting spring and stormwater around the work area.
 - e. Records were not available for review.
 - f. Stormwater Monitoring Reports had not been received at the WVDEP Regional Office since the 1st Half 2007.
 - g. Ricottilli failed to renew its Multi-Sector General WV/NPDES Permit for Stormwater Discharges associated with their industrial activity, a violation of WV Code Chapter 22, Article 11, Section 1 et seq. NOV NW-I-SW-080610-01 was issued.

13. The Division of Water and Waste Management has notified Ricottilli annually from 2006 through 2008 for not submitting Stormwater Monitoring Reports.

14. To date, Ricottilli is operating without a valid WV/NPDES Permit.

15. On November 2, 2011, WVDEP personnel and a representative of Ricottilli 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. Ricottilli shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of entry of this Order, Ricottilli shall submit for approval a proposed corrective action plan and schedule, outlining action items and completion dates for how and when Ricottilli will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. The corrective action plan shall be submitted to:

**Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

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 corrective action plan and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable corrective action plan and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. The corrective action plan shall include the following:
 - a. When and how diversion of spring water and storm water around work areas will be accomplished.
 - b. When and how wood wastes will be handled to minimize contact with storm water.
 - c. When and how general housekeeping will be improved.
 - d. How records will be maintained and available for review.
 - e. When the groundwater pollution plan (GPP) will be updated and implemented.

4. Within thirty (30) days of entry of this Order, Ricottilli shall renew its Multi-Sector General WV/NPDES Permit for Stormwater Discharges associated with its industrial activity.
5. Because of Ricottilli's West Virginia Code violations, Ricottilli shall be assessed a civil administrative penalty of fifteen thousand eight hundred thirty dollars (\$15,830) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. Payment shall be mailed to:

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

OTHER PROVISIONS

1. Ricottilli 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, Ricottilli 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, Ricottilli 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 Ricottilli 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, Ricottilli 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 Ricottilli 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 Ricottilli 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 Ricottilli (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 Ricottilli 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 Ricottilli 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 Ricottilli, its successors and assigns.
7. This Order shall terminate upon Ricottilli's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Ricottilli Fencing of WV

2-21-12

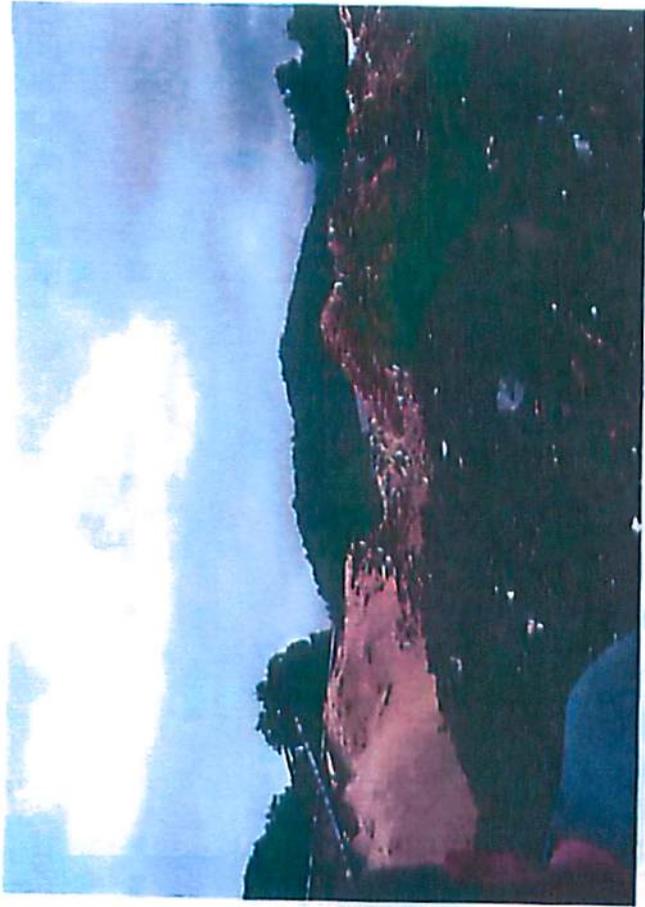
Date

Public Notice begin: _____
Date

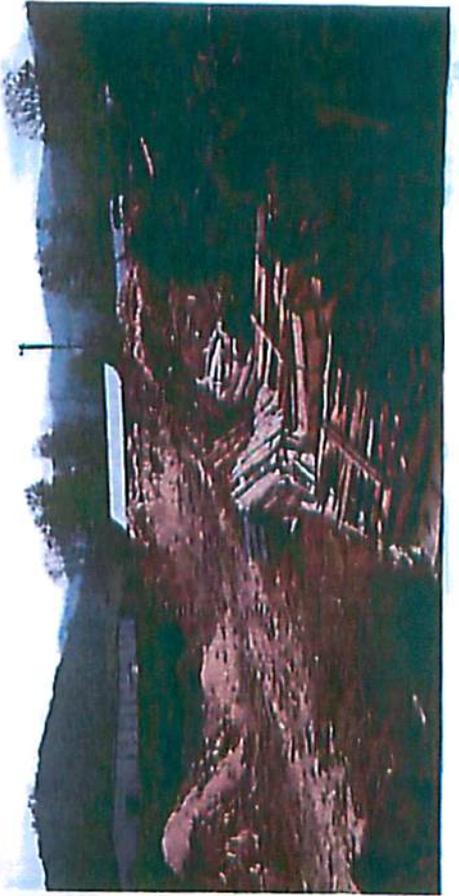
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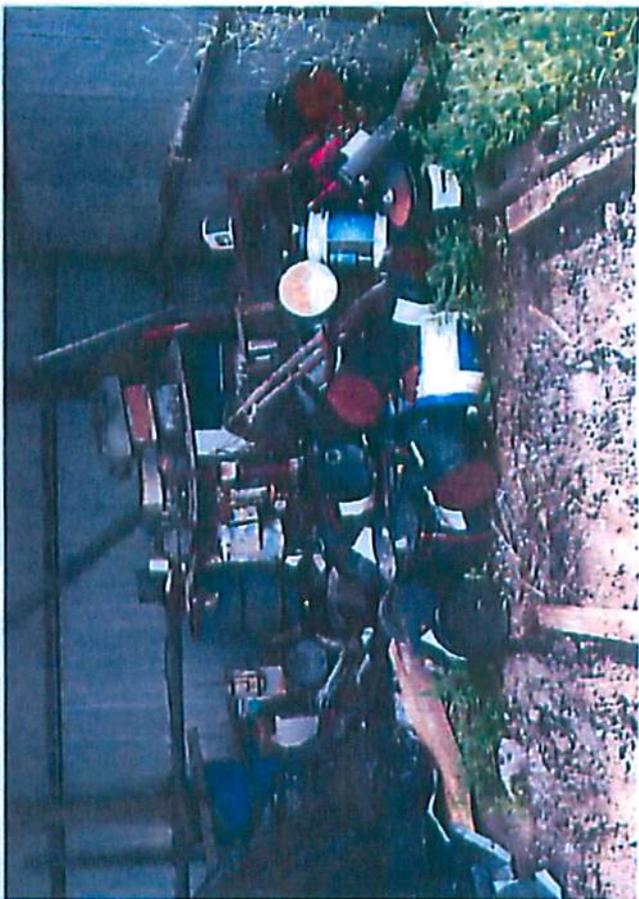
Scott G. Mandirola, Director
Division of Water and Waste Management

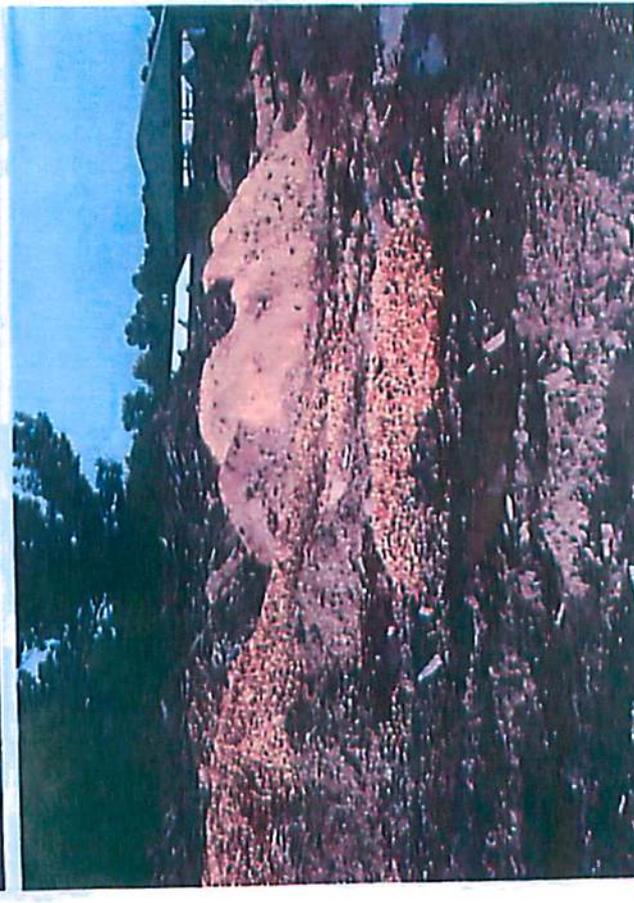
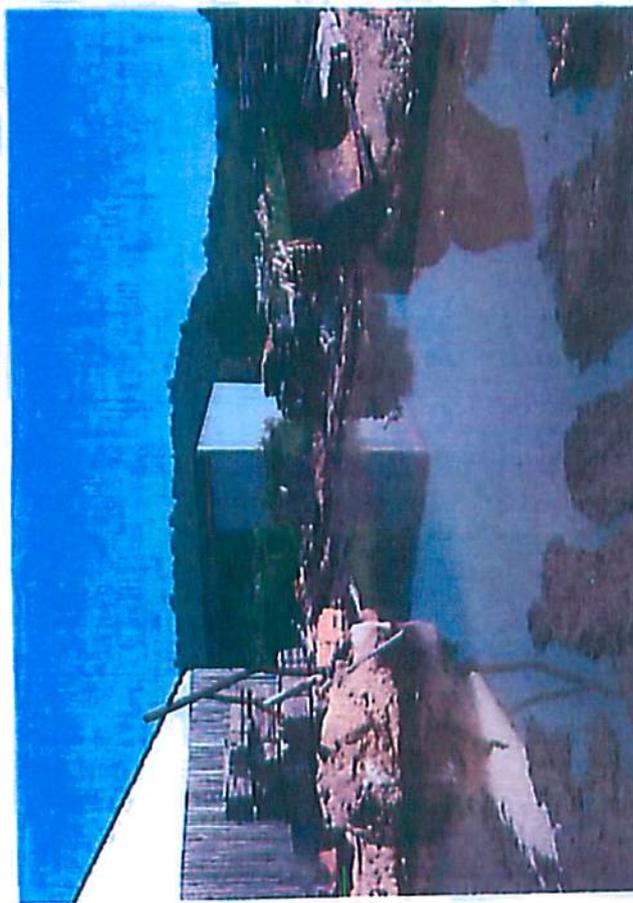
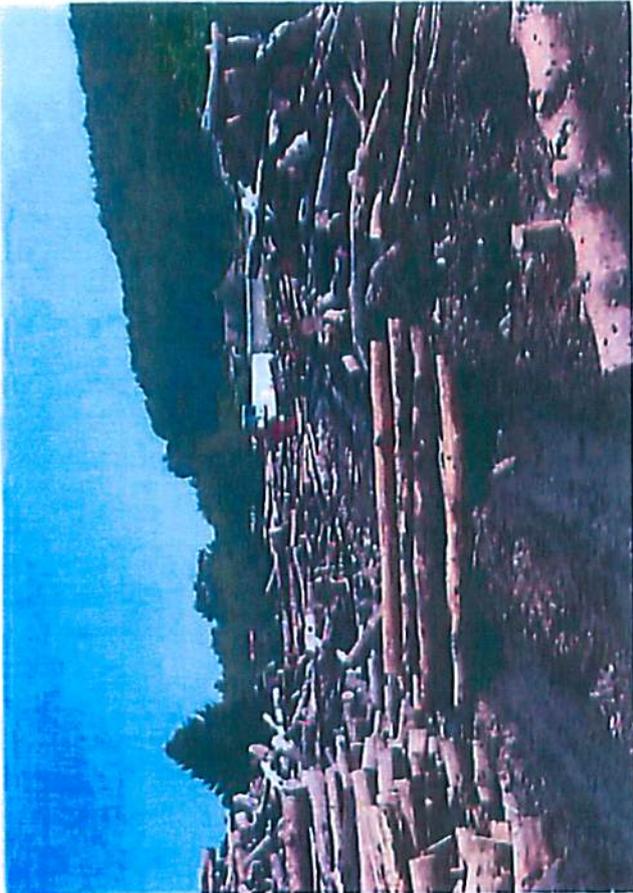
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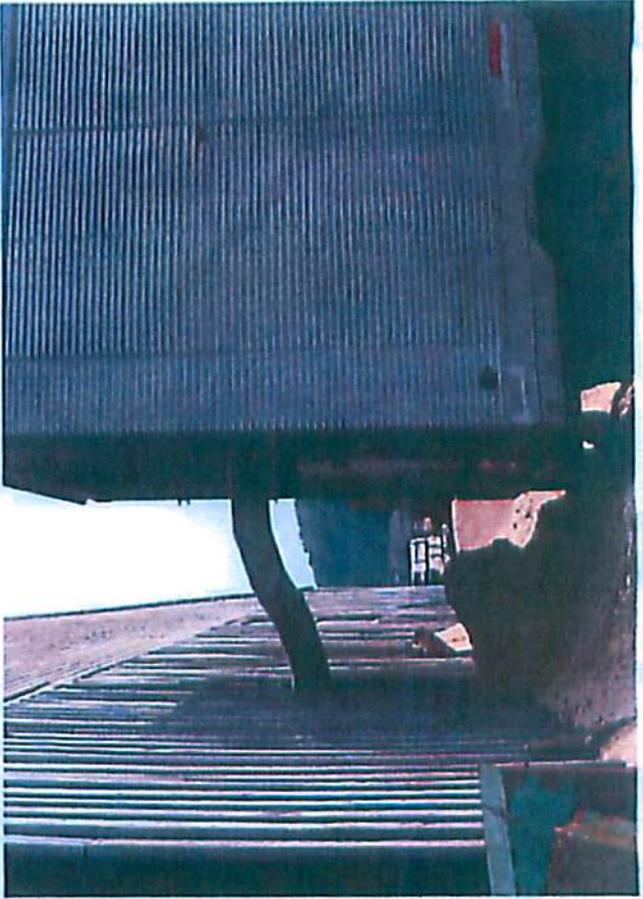
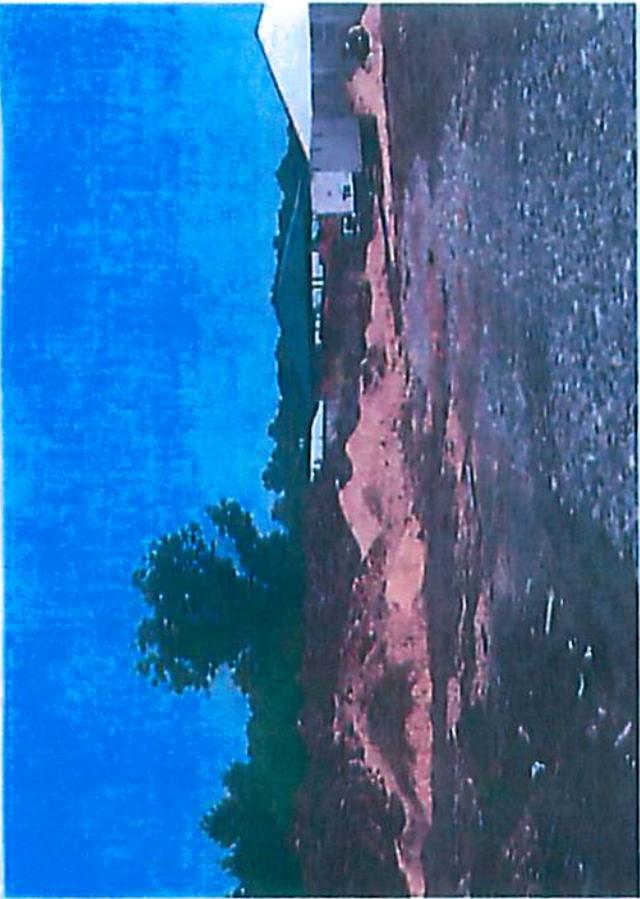


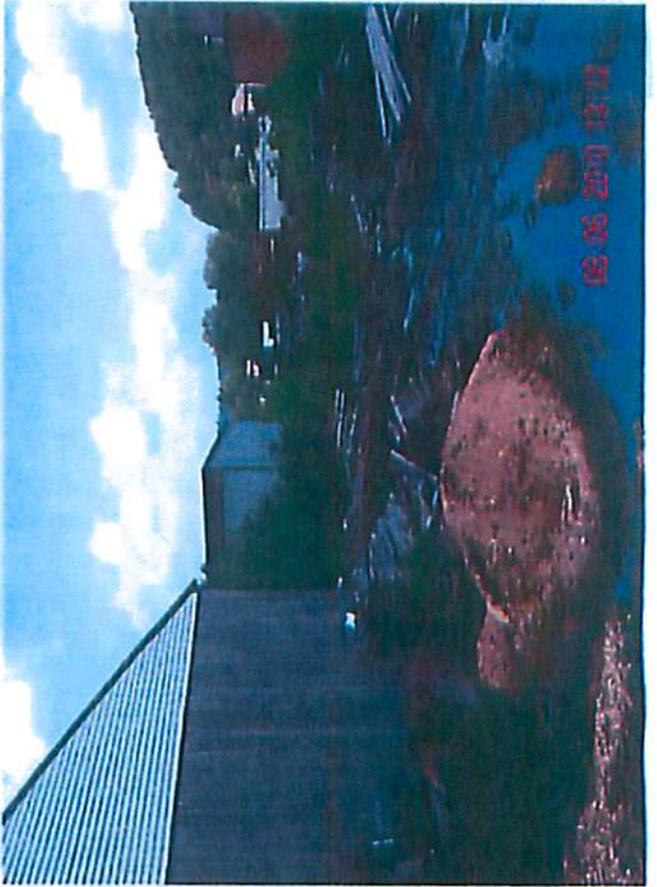
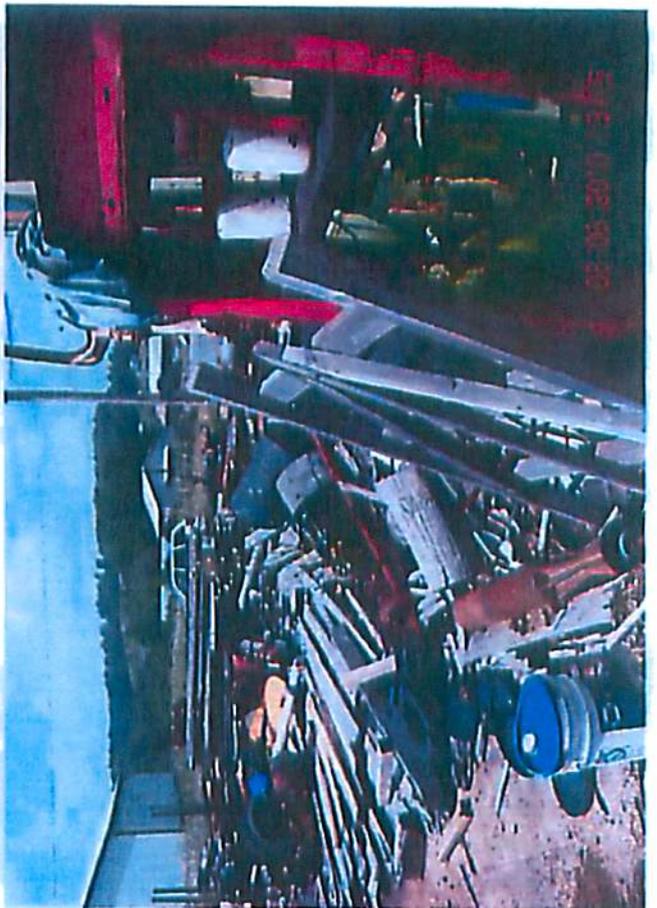


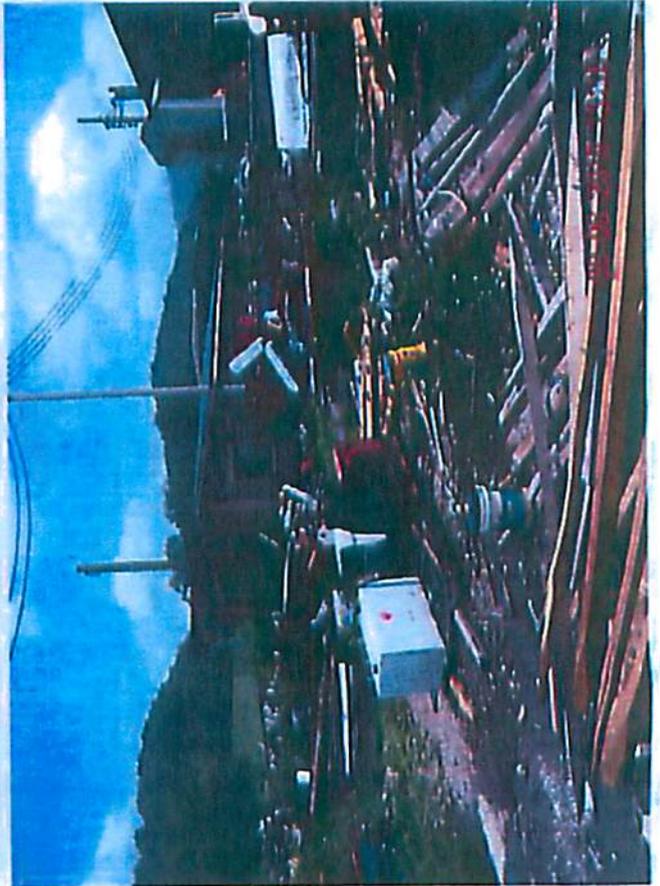
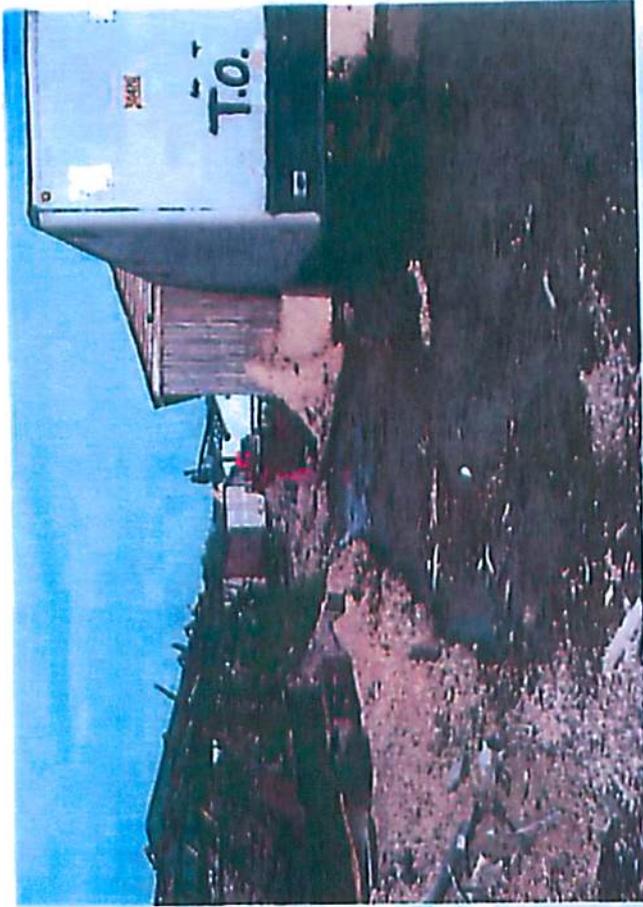


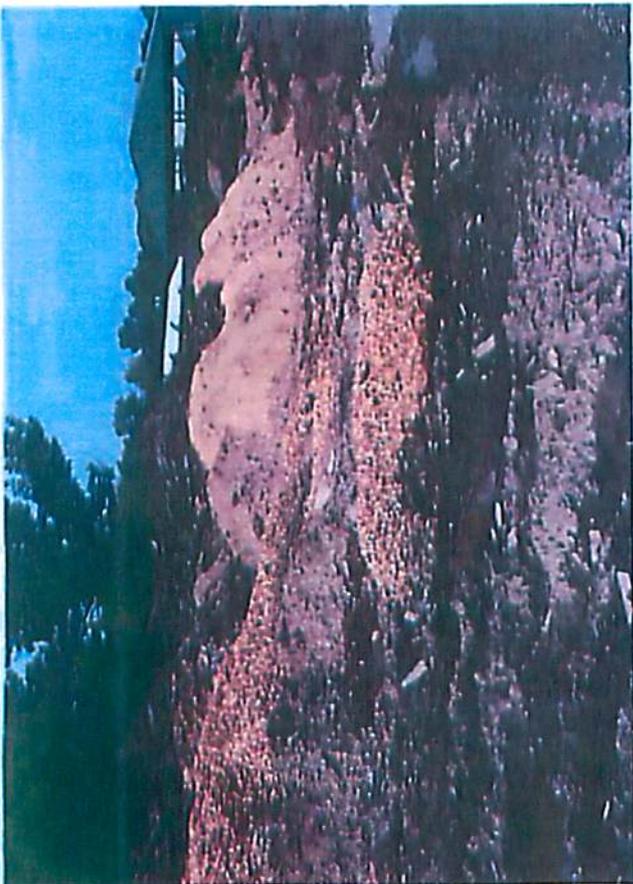
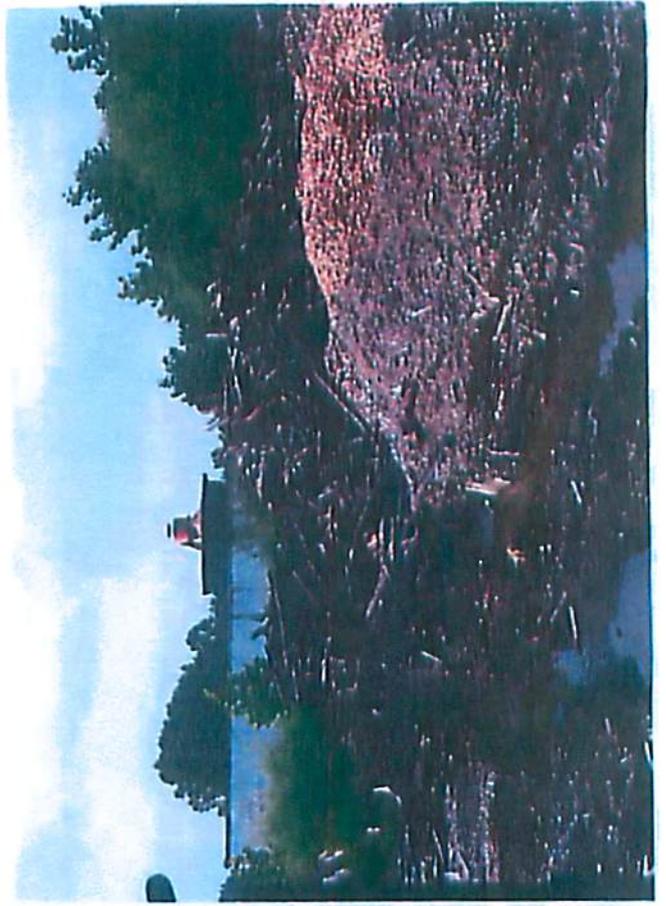












Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Ricottilli 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.

1)	Potential for Harm Factor	Factor Range	FOF#													
			11a	11c	11d	12a	12g									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	0	0	0	0	0									
c)	Sensitivity of the Environment	0 to 3	0	0	0	0	0									
d)	Length of Time	1 to 3	2	1	1	3	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	0	0	1	0									
Average Potential for Harm Factor			0.8	0.4	0.4	1	0.4	No								
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	3	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 -	30		\$2,700
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$5,000		\$5,000
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	(\$900)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$6,830
Penalty =			\$15,830

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	\$5,000
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$5,000
Comments: operational costs to divert and maintain water contacting wood	