



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0488

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: Terry Weber
8469 Burton Lane
Upper Marlboro, MD 20772

DATE: April 6, 2016

ORDER NO.: 8485

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 Terry Weber.

FINDINGS OF FACT

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

1. Terry Weber operates an unpermitted shale pit located on Sugar Hollow Road, in Berkeley Springs, Morgan County, West Virginia.
2. On or about August 7, 2014, West Virginia Department of Environmental Protection (WVDEP) received a complaint regarding the aforementioned shale pit. WVDEP personnel determined that the shale pit was unpermitted and had been operating since at least December 14, 2012, at which time Terry Weber had accepted payment for removed shale.
3. On March 16, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following sections of WV State Code and WV Legislative Rules was observed and documented:
 - a. 22-11-8 and 47CSR10 Section 3.1 – Terry Weber failed to obtain a WV/NPDES Multi-Sector General Water Pollution Control Permit for Storm Water Associated with Industrial Activity prior to operating the aforementioned shale pit. An

Promoting a healthy environment.

unpermitted outlet that discharged into a storm water drain was observed and documented.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W-15-02-GRC-14 was issued to Terry Weber.

4. On June 15, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following sections of WV State Code and WV Legislative Rules was observed and documented:
 - a. 22-11-8 and 47CSR10 Section 3.1 – Terry Weber failed to obtain a WV/NPDES Multi-Sector General Water Pollution Control Permit for Storm Water Associated with Industrial Activity prior to operating the aforementioned shale pit. An unpermitted outlet that discharged into a storm water drain was observed and documented.

As a result of the aforementioned violation, NOV No. W-15-33-GRC-45 was issued to Terry Weber.

5. On September 17, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following sections of the WV State Code and WV Legislative Rules were observed and documented:
 - a. 22-11-8 and 47CSR10 Section 3.1 – Terry Weber failed to obtain a WV/NPDES Multi-Sector General Water Pollution Control Permit for Storm Water Associated with Industrial Activity prior to operating the aforementioned shale pit. An unpermitted outlet that discharged into a storm water drain was observed and documented.

As a result of the aforementioned violation, NOV No. W-15-33-GRC-59 was issued to Terry Weber.

6. On October 17, 2015, WVDEP personnel conducted a record review and determined that Terry Weber had not applied for a WV/NPDES permit for the aforementioned site.
7. On March 22, 2016, WVDEP personnel met with Terry Weber to discuss the terms and conditions of the 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. Terry Weber 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, Terry Weber shall electronically submit an administratively complete application for WV/NPDES permit coverage for the regulated activity. Any questions regarding the application process shall be directed to WVDEP DWWM-Permitting Section at (304) 926-0495.
3. Because of Terry Weber's WV Legislative Rule and WV State Code violations, Terry Weber shall be assessed a civil administrative penalty of twelve thousand three hundred dollars (\$12,300) 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. Terry Weber 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, Terry Weber 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, Terry Weber 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 Terry Weber 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, Terry Weber 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 Terry Weber becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Terry Weber 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 Terry Weber 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 Terry Weber (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 Terry Weber 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 Terry Weber 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 Terry Weber, its successors and assigns.
7. This Order shall terminate upon Terry Weber's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

*Terry Weber does not fully
 Terry Weber under stand All
 Large Language in this order
 Please call 443-336-0591
 To Explain. Thanks
 Public Notice begin: *[Signature]**

4-13-16
 Date

 Date

Public Notice end:

 Date

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

 Date

revised March 2013

RECEIVED

APR 21 2016

ENVIRONMENTAL
 ENFORCEMENT



Figure 1, Unpermitted Shale Pit, 6-15-2015

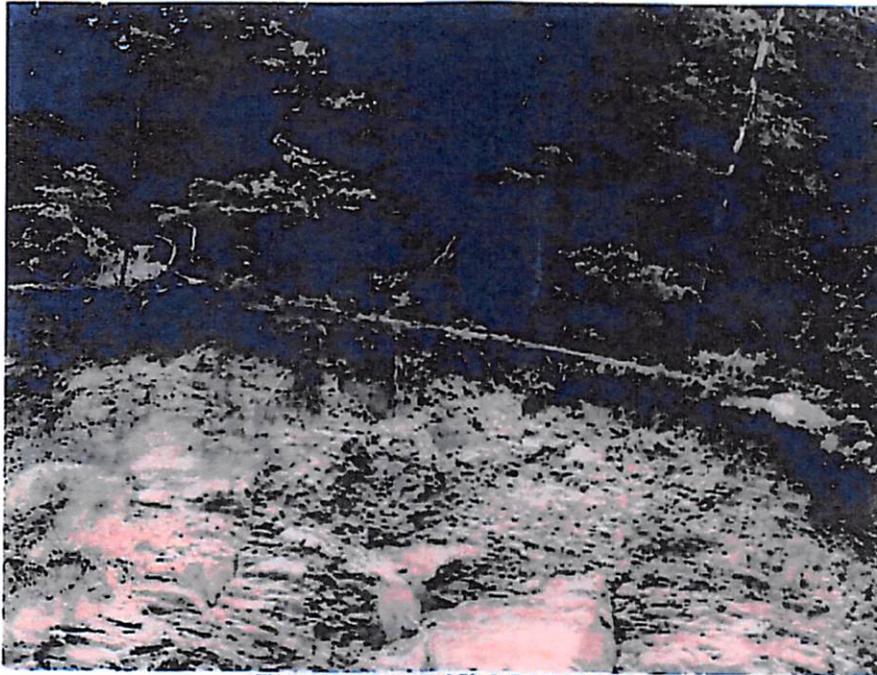


Figure 2, Unpermitted Shale Pit, 6-15-2015

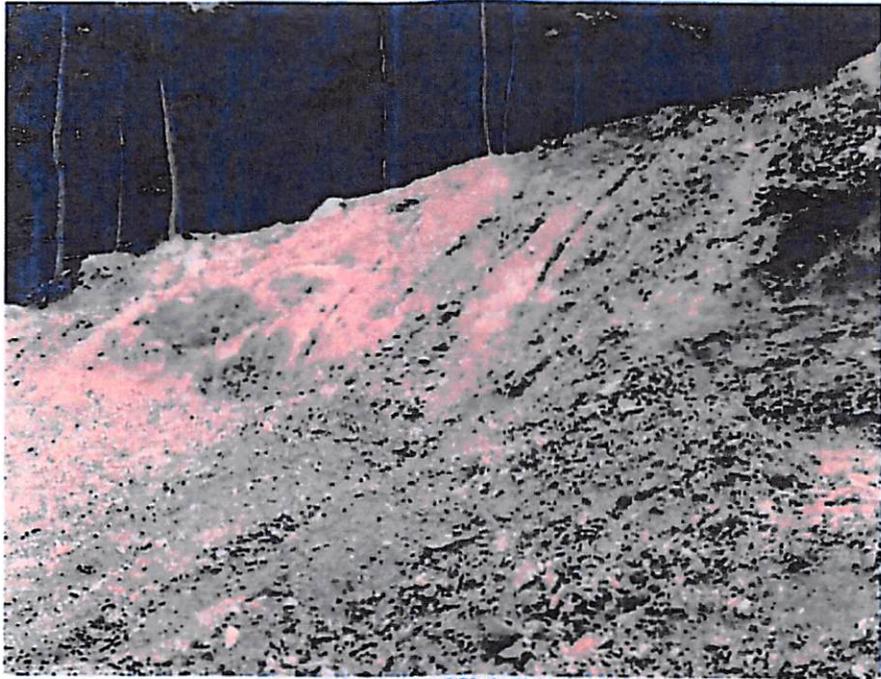


Figure 3, Unpermitted Shale Pit, 6-15-2015



Figure 4, Unpermitted Shale Pit, 6-15-2015



Figure 1, Unpermitted Shale Pit, 9-17-2015

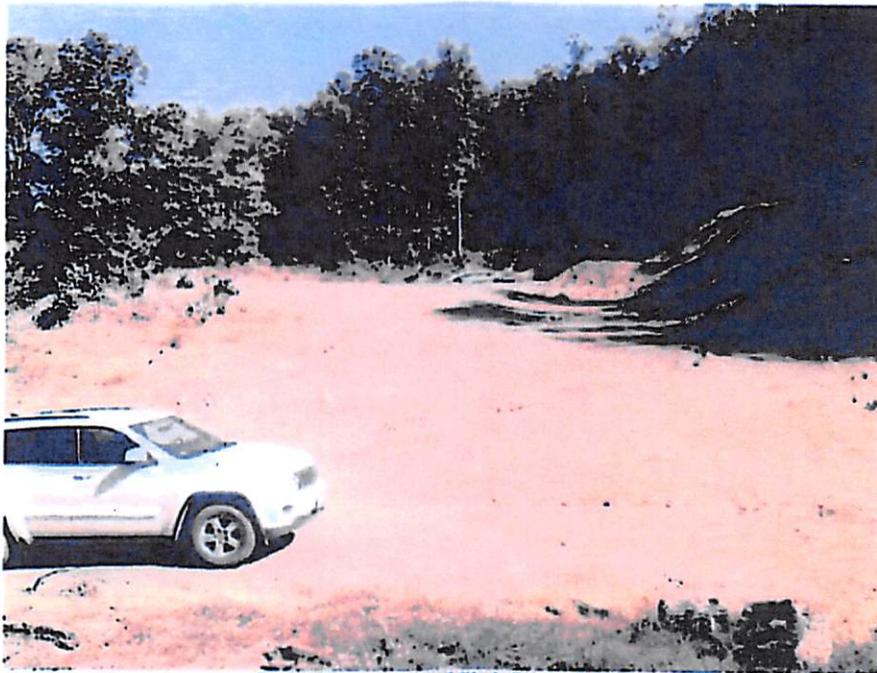


Figure 2, Unpermitted Shale Pit, 9-17-2015



Figure 3, Unpermitted Shale Pit, 9-17-2015



Figure 4, Unpermitted Outlet, 9-17-2015



Figure 5, Unpermitted Outlet, 9-17-2015

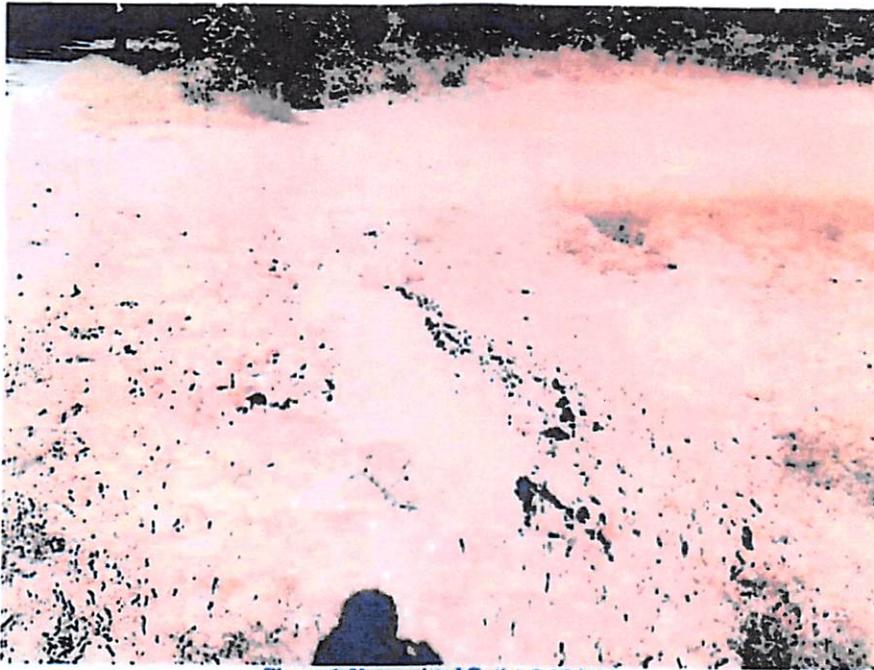


Figure 6, Unpermitted Outlet, 9-17-2015



Figure 7, Unpermitted Outlet, 9-17-2015

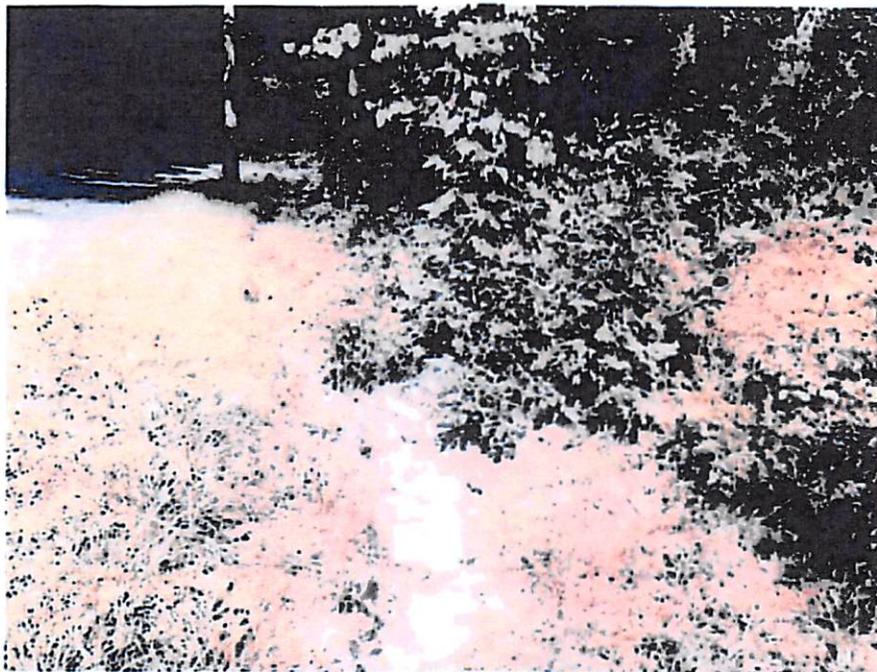


Figure 8, Unpermitted Outlet, 9-17-2015

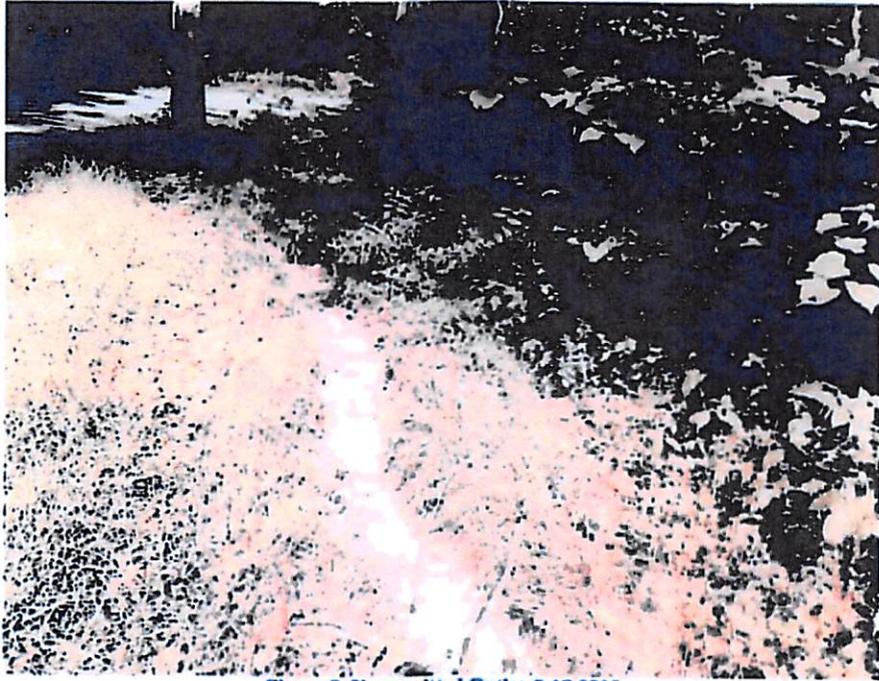


Figure 9, Unpermitted Outlet, 9-17-2015

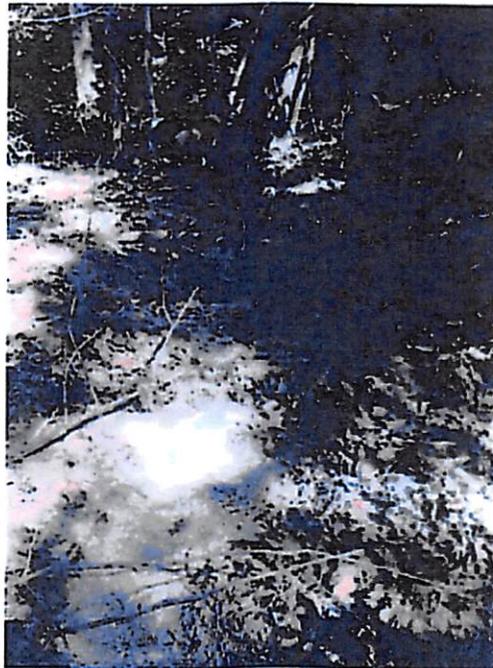


Figure 10, Unpermitted Outlet, 9-17-2015



Figure 11, Unpermitted Outlet, 9-17-2015



Figure 12, Unpermitted Outlet, 9-17-2015

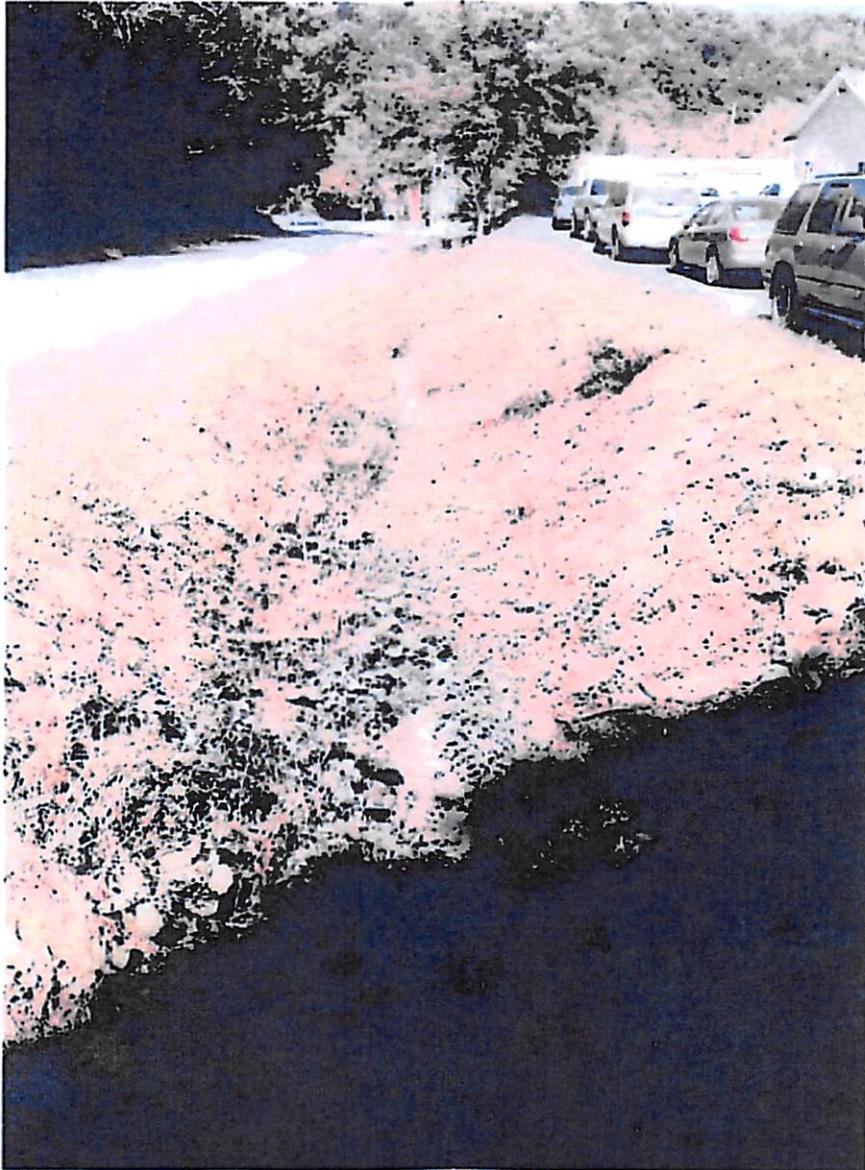


Figure 13, Unpermitted Outlet, 9-17-2015

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Terry Weber **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#											
			3a	4a	5a									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	1									
d)	Length of Time	1 to 3	1	2	3									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1									
Average Potential for Harm Factor			1	1.2	1.4	No								
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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.

		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	Major	\$2,000	1	\$2,000
4a	Moderate	Major	\$4,200	1	\$4,200
5a	Moderate	Major	\$4,400	1	\$4,400
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
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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					\$10,600

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		\$1,060
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,670		\$1,670
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	(\$1,060)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$1,700
Penalty =			\$12,300

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	\$1,670
Competitive Advantage	
Estimated Economic Benefit	\$1,670
Comments:	Avoided cost of WV/NPDES permit application fee (\$1,170) and annual permit fee (\$500).