



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
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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: West Virginia Department of Transportation
Division of Highways
Attn: Mr. Gregory Bailey, State Highway Engineer
1900 Kanawha Blvd E
Building 5, Rm A-317
Charleston WV 25305

DATE: June 15, 2016

ORDER NO.: 8547

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 West Virginia Department of Transportation, Division of Highways (hereinafter "WVDOH").

FINDINGS OF FACT

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

1. WVDOH operates a three hundred ninety (390) acre land disturbance activity known as Corridor H, Davis to Bismark, sections 01-05 located near Davis, Tucker County, West Virginia. WVDOT was issued WV/NPDES Water Pollution Control Permit No. WV0116637 on November 16, 2011. On December 4, 2012, WVDOT and J.F. Allen Company became co-permittees for the aforementioned WV/NPDES permit. On March 20, 2015, the permit was transferred solely to WVDOT.
2. On January 7, 2014, West Virginia Department of Environmental Protection (WVDEP) and JF Allen Company/WVDOT entered into Consent Order No. 7886. The Order was issued in response to JF Allen Company/WVDOT's permit violations, creations of conditions not allowable in waters of the State, and Total Recoverable Iron exceedances at the aforementioned site. The Order required JF Allen/WVDOT to submit a proposed plan of corrective action (POCA) to WVDEP outlining action items and completion dates

for how and when JF Allen/WVDOT would achieve compliance with all terms and conditions of the WV/NPDES permit and pertinent laws and rules.

3. On June 22, 2015, WVDEP and WVDOT entered into Consent Order No. 8121. The Order was issued in response to WVDOT's creations of conditions not allowable in waters of the State and Total Recoverable Iron exceedances at the aforementioned site through December 31, 2014. The Order required WVDOT to submit a proposed POCA within thirty (30) days of the effective date of the Order.
4. On March 25, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of WVDOT's WV/NPDES permit were observed and documented:

- a. Section D.6.b.10-WVDOT failed to implement its Storm Water Pollution Prevention Plan (SWPPP) by failing to stabilize slopes adequately. Specifically, several slopes adjacent to Rt 93 failed and slid into ditches.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W-15-47-13-202 was issued to WVDOT.

5. On April 1, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of WVDOT's WV/NPDES permit were observed and documented:

- a. Section A-Upon review of Discharge Monitoring Reports (DMRs), WVDEP personnel determined that WVDOT failed to meet discharge limitations for Total Recoverable Iron at Outlets Nos. 004, 007, 010, 012, and 014.
- b. Section D.6.b.10-WVDOT failed to implement its SWPPP by allowing sediment laden water to leave the site without passing through an appropriate Best Management Practice (BMP). Specifically, water was pumped into a sediment bag without the bag being on a sufficiently stabilized area, and erosion was occurring around the bag.

As a result of the aforementioned violations, NOV Nos. W-15-47-17-202 and No. W-15-47-16-202 were issued to WVDOT.

6. On April 28, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of WVDOT's WV/NPDES permit were observed and documented:

- a. Section D.6.b.10-WVDOT failed to implement its SWPPP by allowing mud from the construction entrance to escape onto the paved road. In addition, muddy water was leaking from a sediment pond into Beaver Creek.

As a result of the aforementioned violation, NOV No. W-15-47-25-202 was issued to WVDOT.

7. On August 17, 2015, WVDEP personnel conducted an inspection of the facility in response to a complaint. During the inspection, violations of the following sections of WV Legislative Rules and the terms and conditions of WVDOT's WV/NPDES permit were observed and documented:
- a. 47CSR2 Sections 3.2.a and b-WVDOT caused conditions not allowable in waters of the State by creating distinctly visible suspended solids and sediment deposits in Beaver Creek.
 - b. Section A-Upon review of DMRs, WVDEP personnel determined that WVDOT failed to meet discharge limitations for Total Recoverable Iron at Outlet Nos. 002, 006, 010, 012 and 015.
 - c. Section D.6.b.10-WVDOT failed to implement its SWPPP by allowing sediment laden water to leave the site, and by failing to maintain sediment control structures

As a result of the aforementioned violations, NOV Nos. W-15-47-39-202, W-15-47-41-202 and W-15-47-40-202 were issued to WVDOT.

8. On August 19, 2015, WVDEP personnel conducted a follow up inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and the terms and conditions of WVDOT's WV/NPDES permit were observed and documented:
- a. 47CSR2 Section 3.2.a-WVDOT caused conditions not allowable in waters of the State by creating distinctly visible suspended solids in Beaver Creek.
 - b. Section D.6.b.10-WVDOT failed to implement its SWPPP by allowing sediment laden water to leave the site, and failing to maintain sediment control structures.

As a result of the aforementioned violations, NOV Nos. W-15-47-42-202 and W-15-47-47-202 were issued to WVDOT.

9. On August 21, 2015, WVDEP personnel conducted a follow up inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and the terms and conditions of its WV/NPDES permit were observed and documented:
- a. 47CSR2 Section 3.2.a-WVDOT caused conditions not allowable in waters of the State by creating distinctly visible suspended solids in Beaver Creek.
 - b. Section D.6.b.10-WVDOT failed to implement its SWPPP by allowing sediment laden water to leave the site and failing to maintain sediment control structures.

As a result of the aforementioned violations, NOV Nos. W-15-47-43-202 and W-15-47-48-202 were issued to WVDOT.

10. On September 21, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following terms and conditions of WVDOT's WV/NPDES permit and WV State Code were observed and documented:

- a. Section A-WVDOT failed to meet discharge limitations for Total Recoverable Iron at Outlet Nos. 002 and 012 in July 2015 and Outlet Nos. 002, 004, 005, 006, 010, 011, and 014 in August 2015
- b. Appendix A-WVDOT failed to correctly and accurately complete DMRs for March, July, and August 2015. Specifically, WVDOT reported some outlets as removed when they had not been and others as not constructed when in previous months they were reported as having flow.
- c. Section D.6.b.10-WVDOT failed to implement its SWPPP by allowing sediment laden water to leave the site without passing through appropriate BMP, failing to reseed areas without seventy percent (70%) cover, and failing to clean out drop inlets.
- d. 22-11-1 et seq. - Upon review, WVDEP personnel determined that WVDOT failed to comply with the terms and conditions of Order No. 8121 by failing to submit a POCA.

As a result of the aforementioned violations, NOV Nos. W-15-47-46-202, W-15-47-49-202, W-15-47-50-202 and W-15-47-51-202 were issued to WVDOT.

11. On September 25, 2015, WVDEP personnel performed an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of WVDOT's WV/NPDES permit was observed and documented:

- a. Section D.6.b.10-WVDOT failed to implement its SWPPP by failing to control fugitive dust.

As a result of the aforementioned violation, NOV No. W-15-47-52-202 was issued to WVDOT.

12. On September 29, 2015, WVDEP personnel performed an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and the terms and conditions of WVDOT's WV/NPDES permit were observed and documented:

- a. 47CSR2 Section 3.2.a-WVDOT caused conditions not allowable in waters of the State by creating distinctly visible suspended solids in Beaver Creek
- b. Section D.6.b.10-WVDOT failed to implement its SWPPP by allowing sediment laden water to leave the site.

As a result of the aforementioned violations, NOV Nos. W-15-47-53-202 and W-15-47-56-202 were issued to WVDOT.

13. On September 30, 2015, WVDEP personnel performed an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and the terms and conditions of the WV/NPDES permit were observed and documented:

- a. 47CSR2 Section 3.2.a-WVDOT caused conditions not allowable in waters of the State by creating distinctly visible suspended solids in Beaver Creek.

- b. Section D.6.b.10-WVDOT failed to implement its SWPPP by allowing sediment laden water to leave the site.

As a result of the aforementioned violations, NOV Nos. W-15-47-54-202 and W-15-47-55-202 were issued to WVDOT.

14. On December 22, 2015, WVDEP personnel performed an inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:

- a. 47CSR2 Section 3.2.b-WVDOT caused conditions not allowable in waters of the State by creating distinctly visible sediment deposits in Beaver Creek.

As a result of the aforementioned violation, NOV No. W-15-47-75-202 was issued to WVDOT.

15. On February 3, 2016, WVDEP personnel performed an inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:

- a. 47CSR2 Section 3.2.b-WVDOT caused conditions not allowable in waters of the State by creating distinctly visible sediment deposits in Beaver Creek.

As a result of the aforementioned violation, NOV No. W-16-47-03-MJS was issued to WVDOT.

16. On March 15, 2016, WVDEP personnel performed an inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:

- a. 47CSR2 Section 3.2.b-WVDOT caused conditions not allowable in waters of the State by creating distinctly visible sediment deposits in Beaver Creek.

As a result of the aforementioned violation, NOV No. W-16-47-09-MJS was issued to WVDOT.

17. On March 18, 2016, WVDEP personnel conducted a review of facility records from the time period of January 1, 2015 through January 31, 2016. During this review, the following violations of the terms and conditions of WVDOT's WV/NPDES permit were observed:

- a. Section A-Twenty-four (24) exceedances of WVDOT's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-thirteen (13)
 - ii. Moderate violations-nine (9)
 - iii. Major violations-two (2)

18. On May 26, 2016, WVDEP personnel and representatives of WVDOT 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. WVDOT 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 thirty (30) days of the effective date of this Order, WVDOT shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when WVDOT 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. WV0116637 and Order No. 8547. 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.

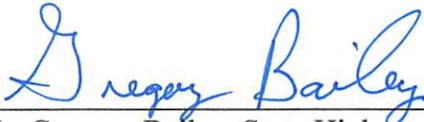
3. Because of WVDOT's West Virginia Code, Legislative Rule and permit violations, WVDOT shall be assessed a civil administrative penalty of ninety-eight thousand three hundred ninety dollars (\$98,390) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality 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. WVDOT 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, WVDOT 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, WVDOT 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 WVDOT 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, WVDOT 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 WVDOT becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and WVDOT 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 WVDOT 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 WVDOT (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 WVDOT 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 WVDOT 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 WVDOT, its successors and assigns.

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



Mr. Gregory Bailey, State Highway Engineer
West Virginia Department of Transportation

9-7-2016

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED

SEP 08 2016

ENVIRONMENTAL
ENFORCEMENT

Table One: WVDOT DMR Exceedance Summary

| Outlet 002 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 6/15 | Total Recoverable Iron | mg/l | 1.5 | 36 | 2300% | - | - | X |
| 7/15 | Total Recoverable Iron | mg/l | 1.5 | 15.6 | 940% | - | - | X |
| 8/15 | Total Recoverable Iron | mg/l | 1.5 | 3.36 | 124% | - | X | - |

| Outlet 003 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 4/15 | Total Recoverable Iron | mg/l | 1.5 | 7.14 | 376% | - | X | - |

| Outlet 004 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 8/15 | Total Recoverable Iron | mg/l | 1.5 | 1.96 | 31% | X | - | - |

| Outlet 005 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 3/15 | Total Recoverable Iron | mg/l | 1.5 | 1.78 | 19% | X | - | - |
| 8/15 | Total Recoverable Iron | mg/l | 1.5 | 4.16 | 177% | - | X | - |
| 11//15 | Total Recoverable Iron | mg/l | 1.5 | 1.69 | 13% | X | - | - |

| Outlet 006 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 6/15 | Total Recoverable Iron | mg/l | 1.5 | 2.5 | 67% | X | - | - |
| 8/15 | Total Recoverable Iron | mg/l | 1.5 | 1.7 | 13% | X | - | - |
| 12/15 | Total Recoverable Iron | mg/l | 1.5 | 7.69 | 413% | - | X | - |

| Outlet 009 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 3/15 | Total Recoverable Iron | mg/l | 1.5 | 2.71 | 81% | X | - | - |

| Outlet 010 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 4/15 | Total Recoverable Iron | mg/l | 1.5 | 8.33 | 455% | - | X | - |
| 6/15 | Total Recoverable Iron | mg/l | 1.5 | 7.03 | 369% | - | X | - |
| 8/15 | Total Recoverable Iron | mg/l | 1.5 | 2.39 | 59% | X | - | - |

| Outlet 011 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 8/15 | Total Recoverable Iron | mg/l | 1.5 | 4.54 | 203% | - | X | - |

| Outlet 012 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 4/15 | Total Recoverable Iron | mg/l | 1.5 | 1.73 | 15% | X | - | - |
| 6/15 | Total Recoverable Iron | mg/l | 1.5 | 5.2 | 247% | - | X | - |
| 7/15 | Total Recoverable Iron | mg/l | 1.5 | 2.69 | 79% | X | - | - |
| 8/15 | Total Recoverable Iron | mg/l | 1.5 | 3.57 | 138% | - | X | - |

Table One: WVDOT DMR Exceedance Summary

| Outlet 014 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 4/15 | Total Recoverable Iron | mg/l | 1.5 | 2.35 | 57% | X | - | - |
| 8/15 | Total Recoverable Iron | mg/l | 1.5 | 2.86 | 91% | X | - | - |

| Outlet 015 DMR Exceedances - MAX. DAILY - 01/01/2015 through 01/31/2016 | | | | | | Degree of non-compliance | | |
|---|------------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 3/15 | Total Recoverable Iron | mg/l | 1.5 | 1.72 | 15% | X | - | - |
| 6/15 | Total Recoverable Iron | mg/l | 1.5 | 2.37 | 58% | X | - | - |

| Outlet Totals | | Degree of non-compliance | | |
|---------------|--|--------------------------|-----|-----|
| | | Min | Mod | Maj |
| | | 13 | 9 | 2 |



1: March 25, 2015- Corridor H slips



2: March 25, 2015- Corridor H slips



3: March 25, 2015 - Corridor H slips



4: March 25, 2015 - Corridor H slips



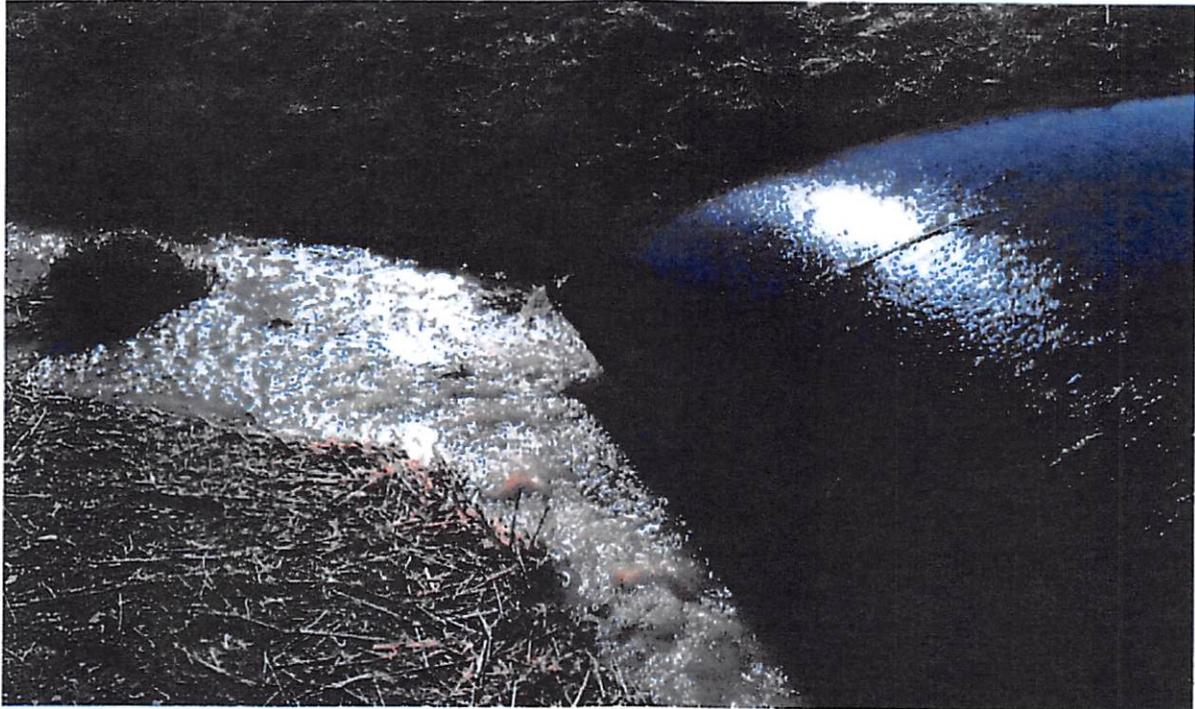
1: April 1, 2015 muddy water coming from sediment bag, bag is black dot in distance



2: April 1, 2015 erosion occurring under and around bag



3: April 1, 2015 water backing up behind bag and coming out bag inlet



4: April 1, 2015 water flowing out and around bag



5: April 1, 2015 sediment bag



April 28 2015-Entrance on to RT 93 with mud



April 28, 2015- Mud on RT 93 from the above pictured entrance



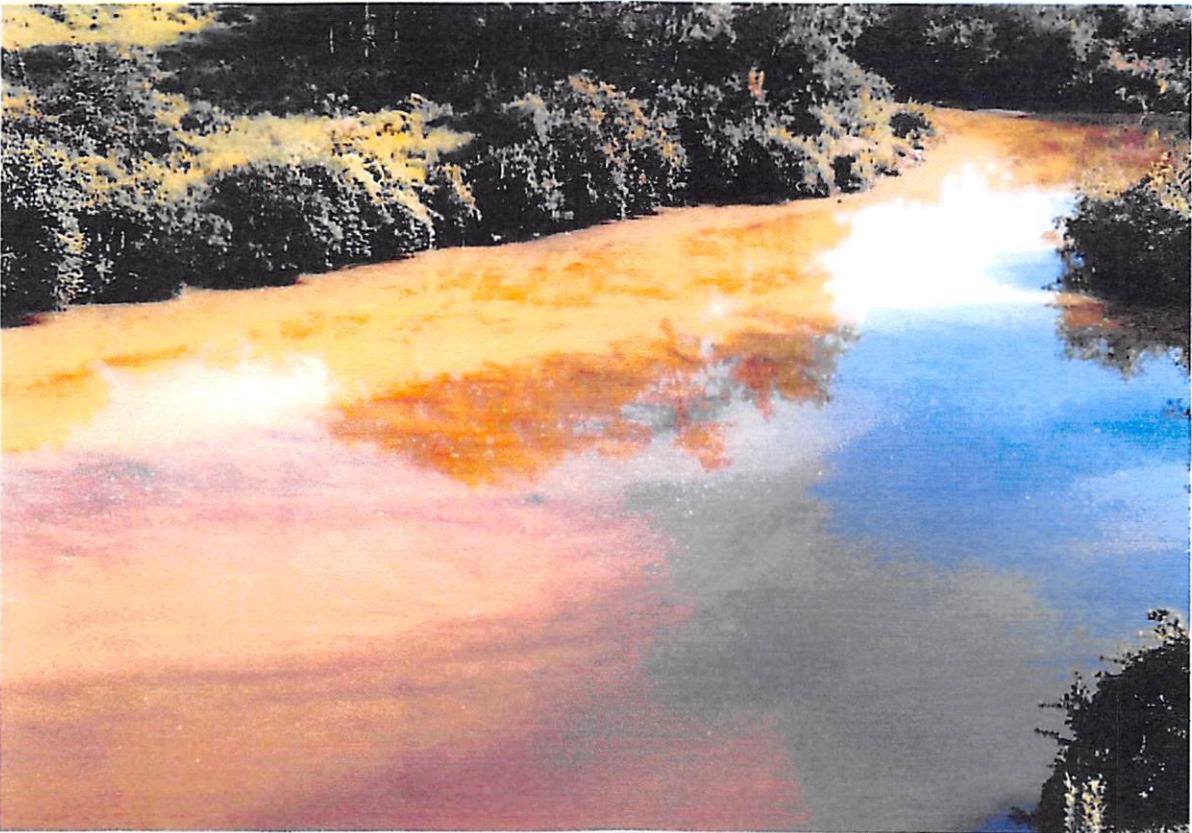
April 28, 2015-Mud entering Beaver Creek from sediment pond



April 28, 2015-Leaking sediment pond



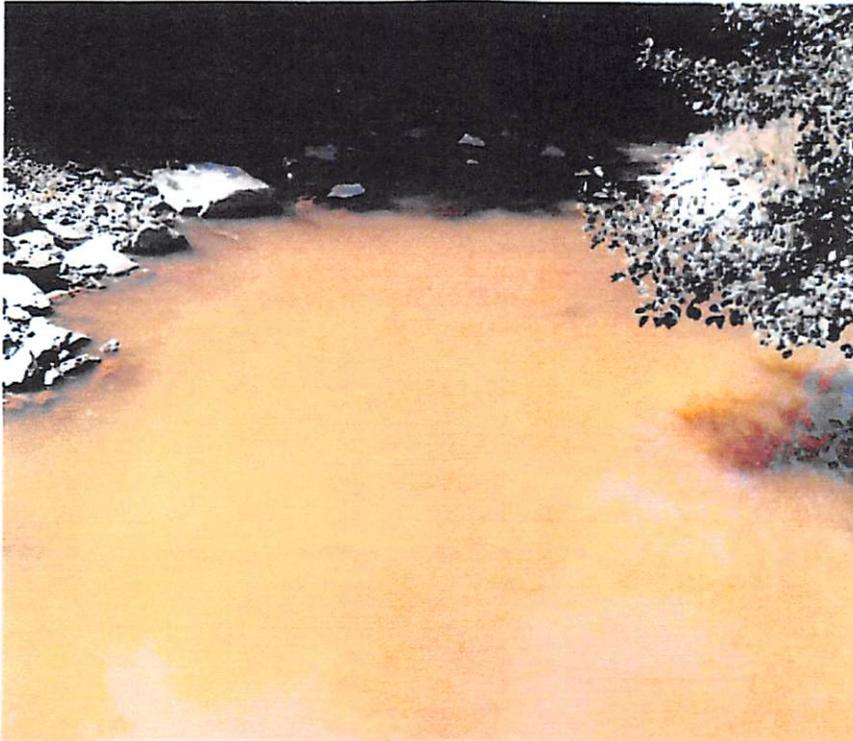
1: August 17, 2015 Beaver Creek entering Blackwater



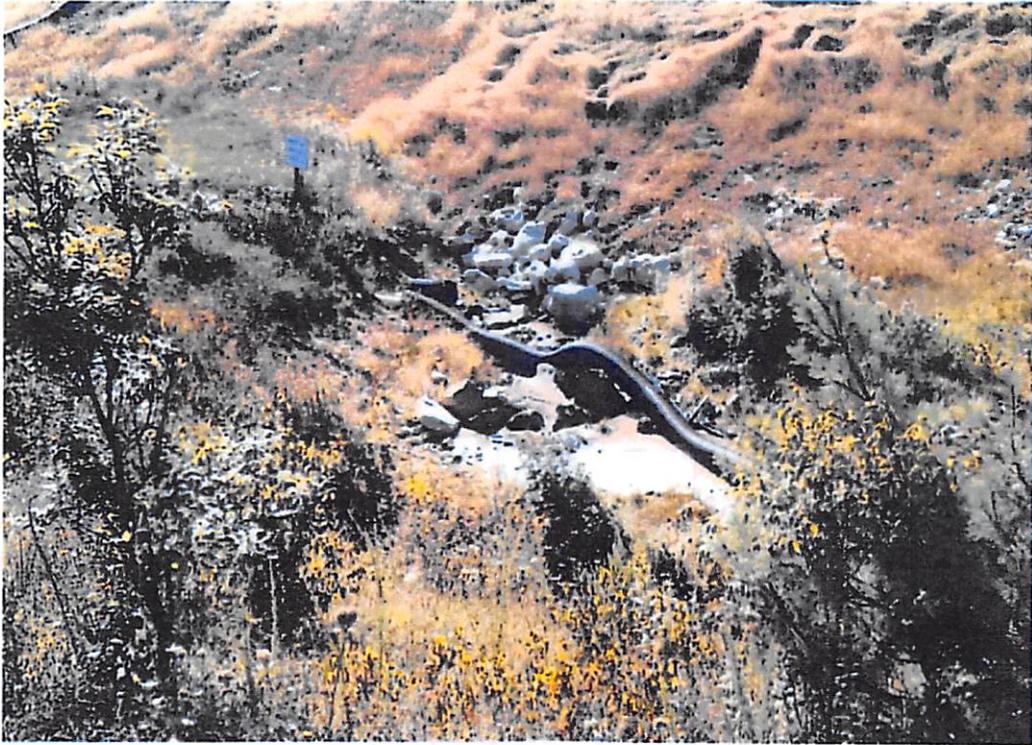
2: August 17, 2015 Beaver Creek entering Blackwater



3: August 17, 2015 sediment in Beaver Creek from dumped rock gutter



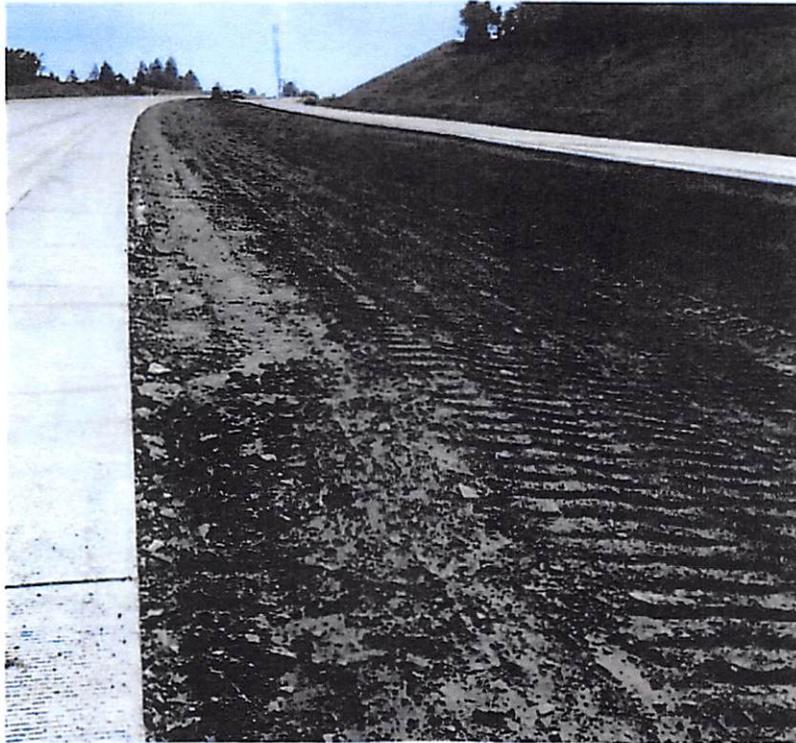
4: August 17, 2015 sediment in Beaver Creek pool just downstream from dumped rock gutter



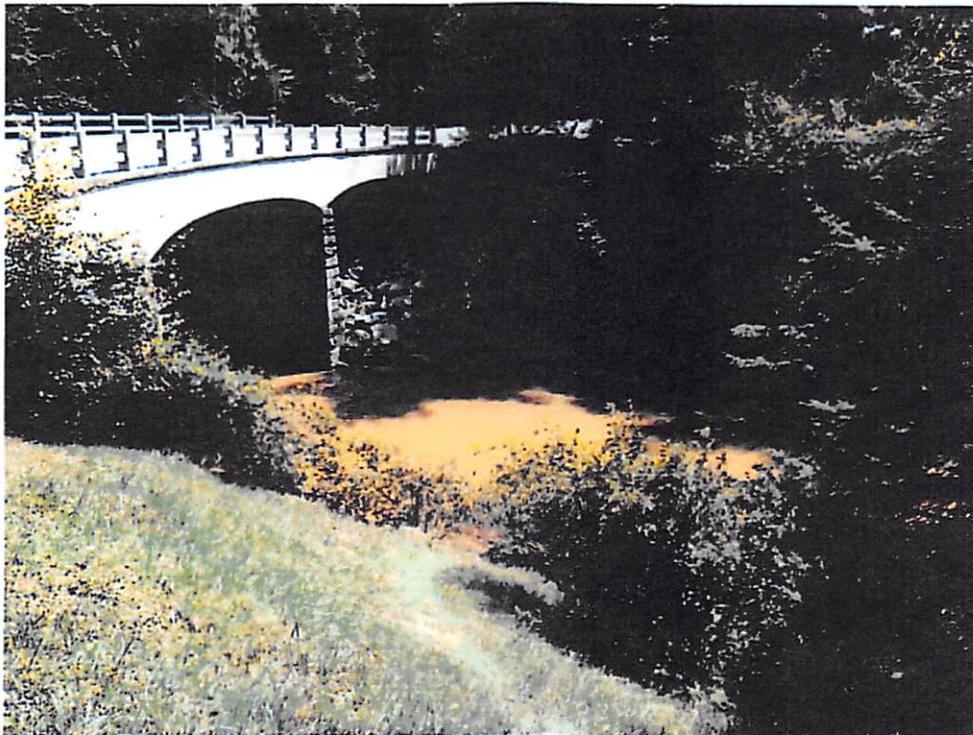
5: August 17, 2015 sediment being discharged at outlet 14



6: August 17, 2015 outlet 14 pond



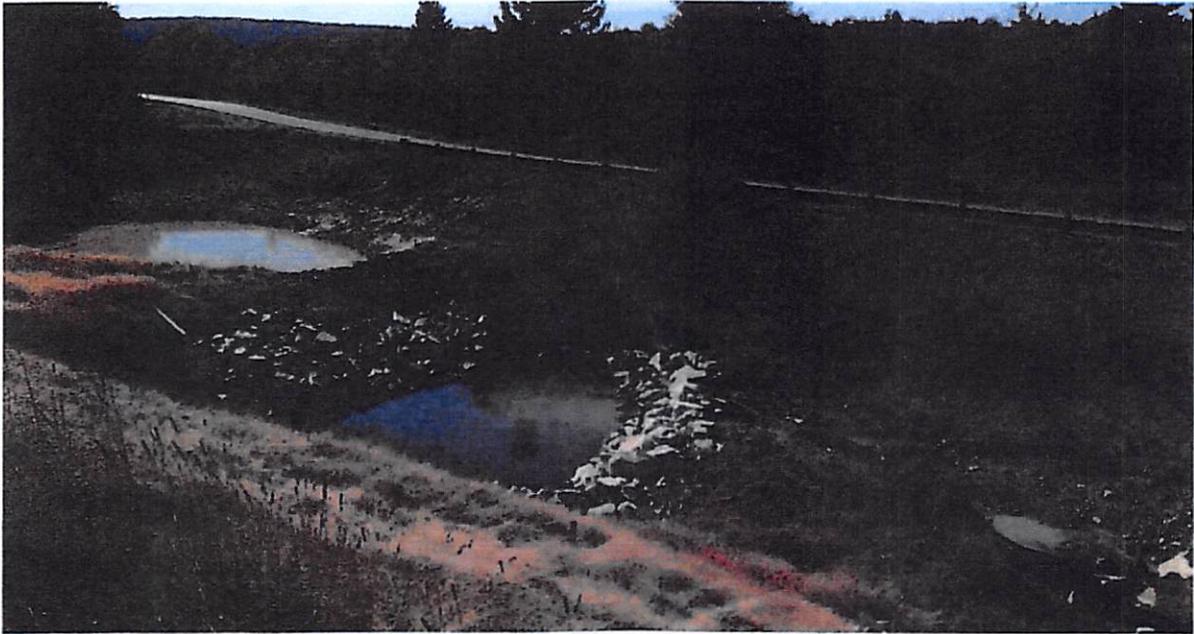
7: August 17, 2015 open median uphill of outlet 14



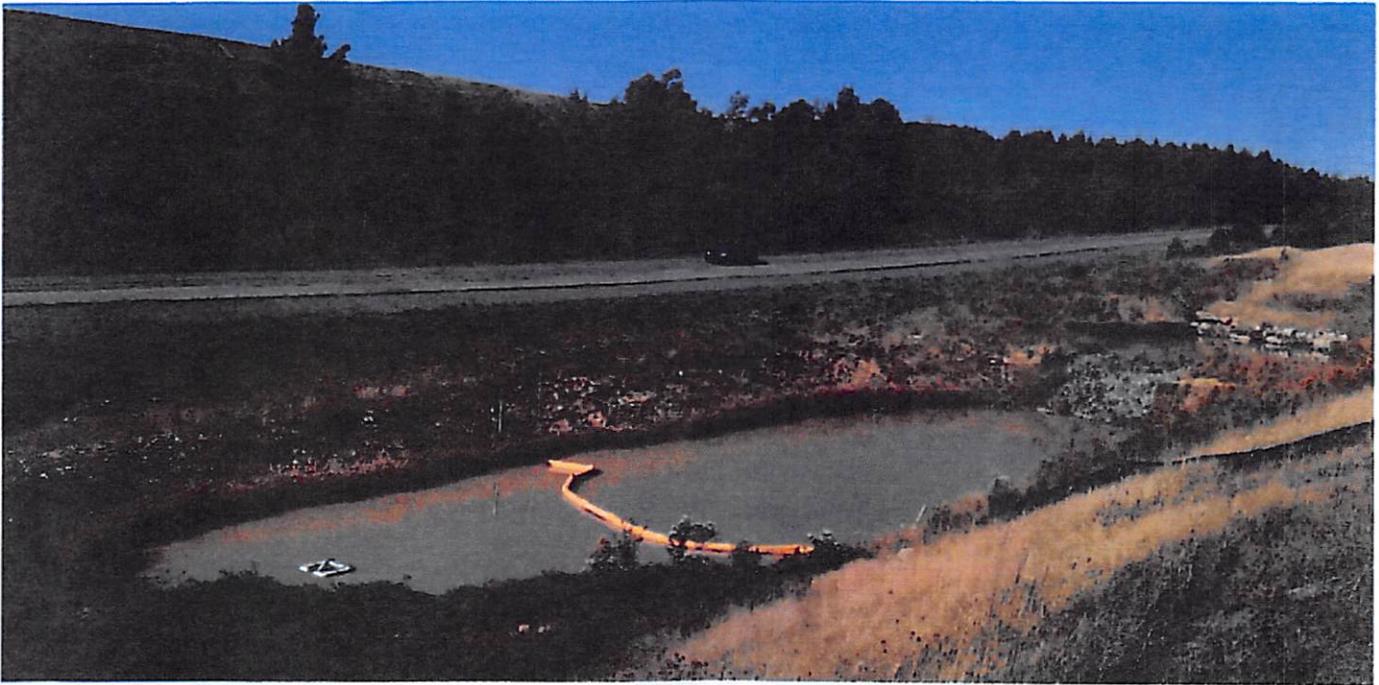
8: August 17, 2015 sediment in Blackwater River in Blackwater Falls State Park



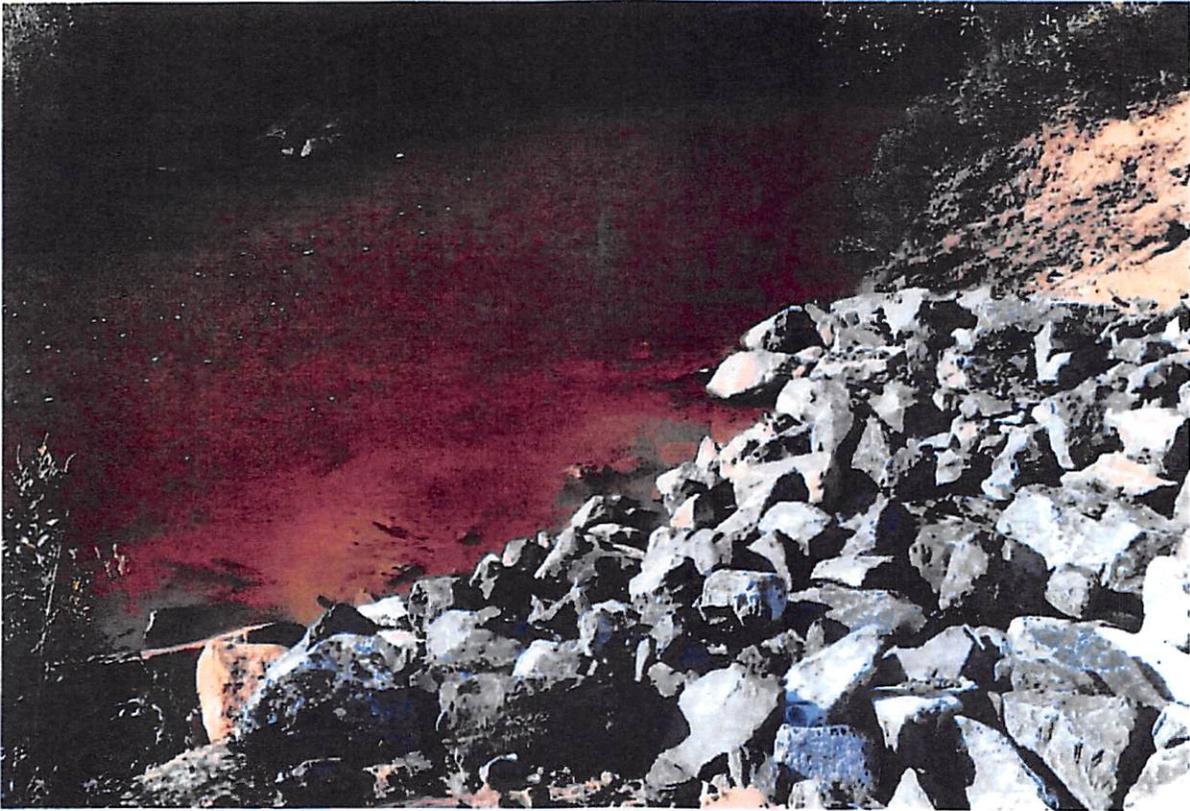
1: August 19, 2015 Beaver Creek entering Blackwater



1: August 21, 2015 sediment laden water discharging from outlet 14



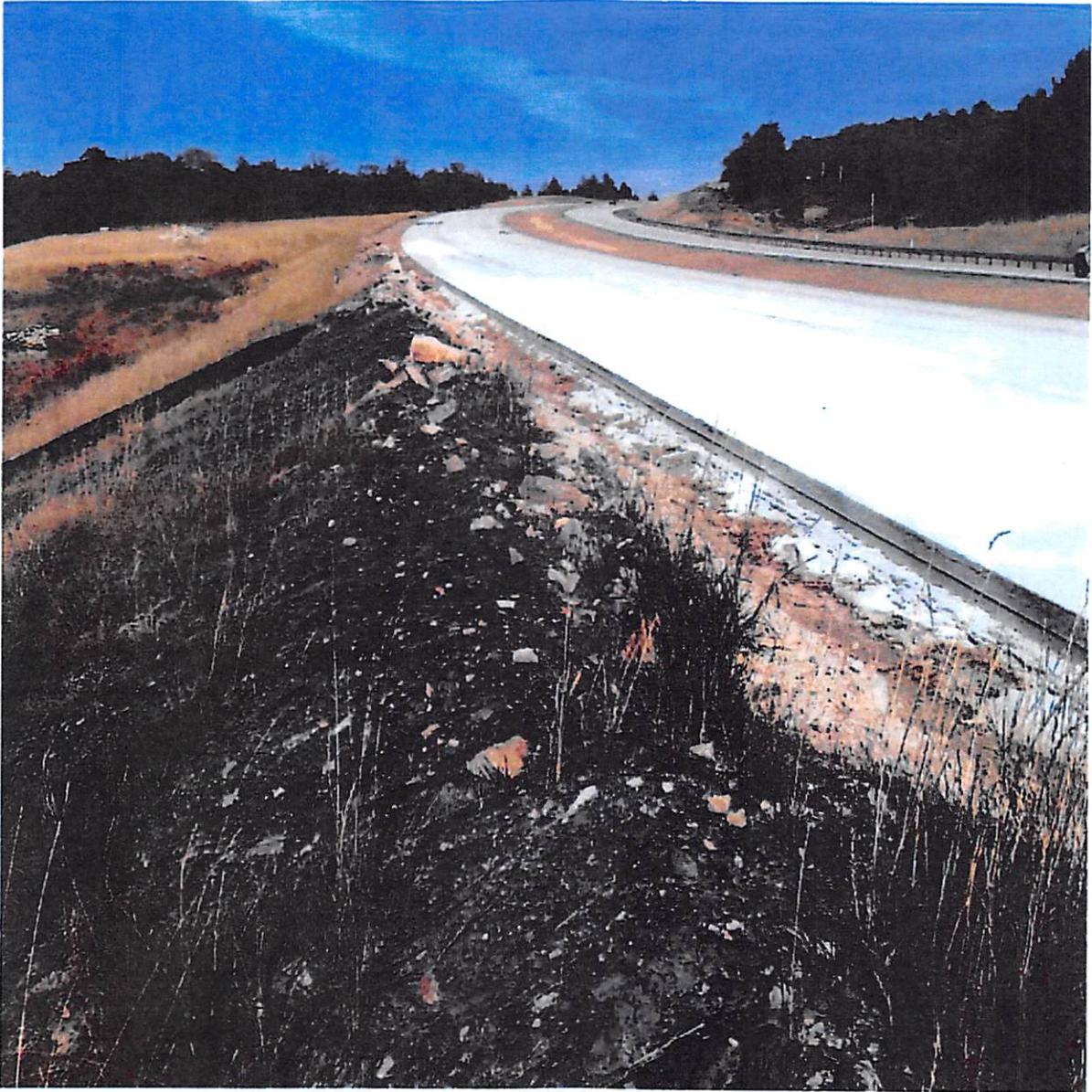
2: August 21, 2015 outlet 14 pond



3: August 21, 2015 sediment laden water leaving dumped rock gutter



4: August 21, 2015 Beaver Creek entering Blackwater



5: August 21, 2015 section 5 median above outlet 14



1: September 21, 2015 - drop inlet with debris in it



2: September 21, 2015 - another drop inlet with debris in it



3: September 21, 2015 - embankment with less than 70% cover and it appears to be entirely annual



4: September 21, 2015 - unstablized bank adjacent to beaver pond near bridge, beaver pond muddy



September 29, 2015- outlet at Connector B discharging sediment laden water into Beaver Creek



September 29, 2015 outlet at Connector B discharging sediment laden water into Beaver Creek



September 29, 2015 Connector B ditch and culvert, matting has washed loose and plugged culvert



September 29, 2015 Outlet 14 discharging sediment laden water to tributary of Beaver Creek



September 29, 2015 ditch at Metikki Entrance discharging sediment laden water to Beaver Creek



September 30, 2015 Connector B, Matting washed out, grey material on ditch banks and road is concrete mud from concrete grinding that occurred on road grade



September 30, 2015, Outlet 14 discharging sediment laden water into Beaver Creek tributary



September 30, 2015, Metikki Entrance ditch discharging sediment laden water into Beaver Creek



September 30, 2015, Beaver Creek entering Blackwater River



Figure 1: 12-22-15 Beaver Creek entering the Blackwater



Figure 2: 12-22-15 ditch in section 1 discharging sediment to Beaver Creek



Figure 3: 12-22-15, drop inlet in median of section 1

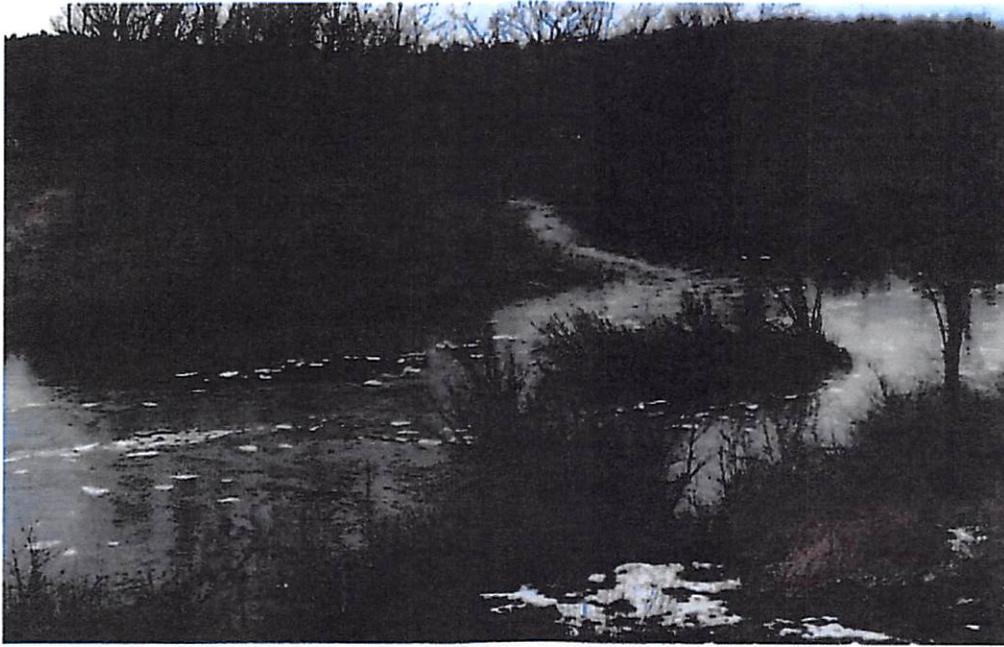


Figure 1 February 3, 2016 Beaver Creek entering Blackwater River

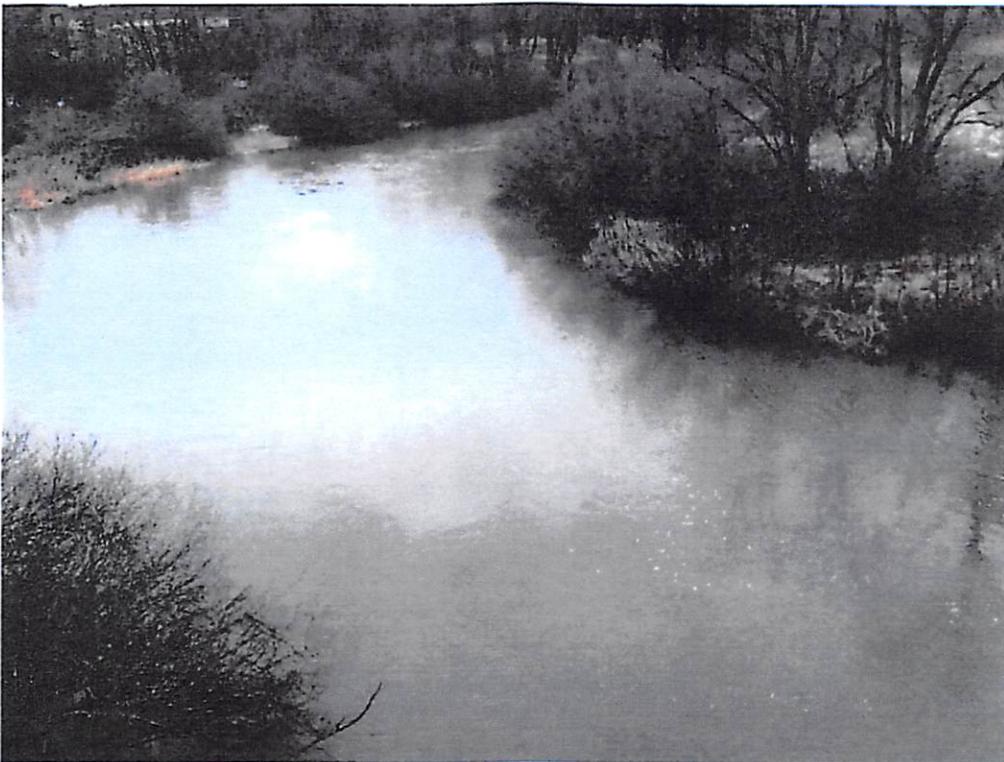


Figure 2 February 3, 2016 Beaver Creek at Camp 70 bridge



Figure 3 February 3, 2016 sediment laden water entering Beaver Creek at section 1 bridge



Figure 4 February 3, 2016 Sediment laden water leaving control structure at outlet 14



Figure 5 February 3, 2016 Sediment laden water leaving structure at Outlet 14



Figure 6 February 3, 2016 Sediment laden water entering clean water ditch near Outlet 10



Figure 7 February 3, 2016 Sediment laden water entering clean water ditch near Outlet 10



Figure 8 February 3, 2016 Sediment laden water entering Beaver Creek near Outlet 10

WV0116637
Corridor H Davis to Bismarck
March 15, 2016



Figure 1 March 15, 2016 clean water diversion near outlet 10



Figure 2 March 15, 2016 clean water diversion culvert near outlet 10

WV0116637
Corridor H Davis to Bismarck
March 15, 2016



Figure 3 March 15, 2016 Beaver Creek bridge in section 1

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: WVDOT 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# | | | | | | | | | | | | | |
|--|-------------------------------------|---------------------|------|-----|----|-----|-----|-----|-----|-----|-----|-----|------|-------|--------|---|
| | | | 4a | 6a | 7a | 7c | 10b | 10c | 10d | 14a | 15a | 16a | 17ai | 17aii | 17aiii | |
| a) | Amount of Pollutant Released | 1 to 3 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| b) | Toxicity of Pollutant | 0 to 3 | 1 | 1 | 1 | 1 | 0 | 1 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| c) | Sensitivity of the Environment | 0 to 3 | 1 | 1 | 1 | 1 | 0 | 1 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| d) | Length of Time | 1 to 3 | 1 | 2 | 1 | 3 | 1 | 3 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| e) | Actual Exposure and Effects thereon | 0 to 3 | 1 | 1 | 1 | 1 | 0 | 1 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Average Potential for Harm Factor | | | 1 | 1.2 | 1 | 1.4 | 0.4 | 1.4 | 0.4 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| 2) | Extent of Deviation Factor | Factor Range | | | | | | | | | | | | | | |
| | Degree of Non-Compliance | 1 to 3 | 3 | 3 | 3 | 3 | 1 | 3 | 3 | 3 | 3 | 3 | 1 | 2 | 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 |
|---------------------------|--------------------|---------------------|---------|-----------------|-----------------|
| 4a | Minor | Major | \$2,000 | 1 | \$2,000 |
| 6a | Moderate | Major | \$4,200 | 1 | \$4,200 |
| 7a | Minor | Major | \$2,000 | 1 | \$2,000 |
| 7c | Moderate | Major | \$4,400 | 1 | \$4,400 |
| 10b | Minor | Minor | \$400 | 3 | \$1,200 |
| 10c | Moderate | Major | \$4,400 | 1 | \$4,400 |
| 10d | Minor | Major | \$1,700 | 1 | \$1,700 |
| 14a | Minor | Major | \$2,000 | 1 | \$2,000 |
| 15a | Minor | Major | \$2,000 | 1 | \$2,000 |
| 16a | Minor | Major | \$2,000 | 1 | \$2,000 |
| 17ai | Minor | Minor | \$1,000 | 13 | \$13,000 |
| 17aii | Minor | Moderate | \$1,500 | 9 | \$13,500 |
| 17aiii | Minor | Major | \$2,000 | 2 | \$4,000 |
| 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 | | | | | \$56,400 |

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 - | 20 | | \$11,280 |
| 6.2.b.4 - Compliance/noncompliance history | 50 | | \$28,200 |
| 6.2.b.6 - Economic benefits - (flat monetary increase) | \$13,760 | | \$13,760 |
| 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 | | 10 | (\$5,640) |
| 6.2.b.3 - Cooperation with the Secretary | | 10 | (\$5,640) |
| 6.2.b.5 - Ability to Pay | | | \$0 |
| Penalty Adjustments | | | \$41,990 |
| Penalty = | | | \$98,390 |

| Estimated Economic Benefit Item | Estimated Benefit (\$) |
|--|---|
| Monitoring & Reporting | |
| Installation & Maintenance of Pollution Control Equipment | \$13,760 |
| O&M expenses and cost of equipment/materials needed for compliance | |
| Permit Application or Modification | |
| Competitive Advantage | |
| Estimated Economic Benefit | \$13,760 |
| Comments: | Avoided cost of maintaining approximately 126 drop inlets, installing approximately 130 ditch checks, and laying approximately 30 rolls of matting. |