



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
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
SOLID WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 15**

TO: Wetzel County Sanitary Landfill
Ryan K. Inch, P.E.
Route 1, Box 156A
New Martinsville, WV 26155

DATE: December 10, 2013
ORDER NO.: MM-13-013

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. and Chapter 22, Article 15, Section 1 et seq. to Wetzel County Sanitary Landfill (hereinafter "Wetzel County Landfill").

FINDINGS OF FACT

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

1. Wetzel County Landfill operates a sanitary landfill located near New Martinsville, Wetzel County, West Virginia. Wetzel County Landfill was issued WV/NPDES Water Pollution Control Permit No. SWF1021 / WV0109185 on September 14, 2009.
2. On October 11, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Wetzel County Landfill's WV/NPDES permit were observed and documented:
 - a. Section A.001 - Priority Pollutants, Volatile Organics, Base Neutrals, Acid Extractables, Metals, and Pesticides were not sampled as required.

Promoting a healthy environment.

- b. Section C.12.b - 2011 stormwater reports reflected that six (6) Outlet 003 sample results were above benchmark concentrations, and one (1) Outlet 002 sample result was above benchmark concentrations. No Plan of Corrective Action (POCA) was submitted in response to these exceedances.
- c. 33CSR1 Section 4.11.a.5.c - Wetzel County Landfill failed to measure groundwater elevation in each well immediately prior to purging each time groundwater was sampled. Due to the fixed top cap of MW-5, groundwater elevations could not be measured.
- d. 33CSR1 Section 3.8.d.1.e - Wetzel County Landfill failed to extend the MW-2 apron three (3) feet or more from the outer edge of the borehole.

As a result of the aforementioned violations, Notice of Violation (NOV) No. CM-TJA-011112-001 was issued to Wetzel County Landfill.

- 3. On February 8, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Wetzel County Landfill's WV/NPDES permit were observed and documented:
 - a. 33CSR1 Section 4.6.b.1.A - Wetzel County Landfill failed to place solid waste for disposal only at the designated working face. Drilling mud waste was being solidified and stored inside of the composting building for extended periods.
 - b. Section A.001 - Outfall 001 exceeded effluent limitations for December 2012 and January 2013.
 - c. 47CSR2 Section 3.2.a - Wetzel County Landfill caused conditions not allowable in waters of the State. Specifically, the access road drainage was creating distinctly visible settleable solids in an unnamed tributary of Peach Fork.

As a result of the aforementioned violations, NOV Nos. SW-NW-SW-0208-01, SW-NW-SW-0208-02, and SW-NW-SW-0208-03 were issued to Wetzel County Landfill.

- 4. On February 27, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:
 - a. 33CSR1 Section 4.11.a.3 - In 2012, Wetzel County Landfill failed to determine the groundwater flow rate and direction of the uppermost significant aquifer.
 - b. 33CSR1 Section 4.11.a.6 - In 2012, Wetzel County Landfill failed to perform a statistical analysis of the groundwater results each time the groundwater was assessed.
 - c. 33CSR1 Section 4.6.b.1.A - Wetzel County Landfill failed to place solid waste for disposal only at the designated working face. Drilling mud wastes were being stored in the composting building for extended periods.

As a result of the aforementioned violations, NOV Nos. SW-NW-SW-032713-01, SW-NW-SW-032713-02, and SW-NW-SW-032713-03 were issued to Wetzel County Landfill.

5. On July 30, 2013, WVDEP personnel and representatives of Wetzel County Landfill met to discuss the terms and conditions of this Order. Subsequent to the meeting, Wetzel County Landfill submitted corrected Discharge Monitoring Reports (DMRs).
6. On November 20, 2013, WVDEP personnel conducted a review of facility records from the time period of February 28, 2011 through February 28, 2013. During this review, the following violations of the terms and conditions of Wetzel County Landfill's WV/NPDES permit were observed:
 - a. Section A.001 - Forty-three (43) exceedances of Wetzel County Landfill's permit parameters were observed and documented (Table One). These exceedances can be further defined as:
 - i. Minor violations-eighteen (18)
 - ii. Moderate violations-twenty-one (21)
 - iii. Major violations-four (4)

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 15, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Wetzel County Landfill 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, Wetzel County Landfill shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Wetzel County Landfill 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. SWF1021 / WV0109185 and Order No. MM-13-013. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
Compliance Monitoring
PO Box 662
Teays, WV 25569**

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 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 Wetzel County Landfill's Legislative Rule and permit violations, Wetzel County Landfill shall be assessed a civil administrative penalty of thirty-three thousand five hundred seventy dollars (\$33,570) 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:**

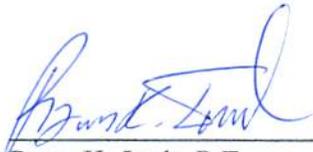
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Wetzel County Landfill hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 15, Section 16 of the Code of West Virginia. Under this Order, Wetzel County Landfill 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, Wetzel County Landfill 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 Wetzel County Landfill 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, Wetzel County Landfill 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 Wetzel County Landfill becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Wetzel County Landfill 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 Wetzel County Landfill 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 Wetzel County Landfill (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 Wetzel County Landfill 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 Wetzel County Landfill 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 Wetzel County Landfill, its successors and assigns.
7. This Order shall terminate upon Wetzel County Landfill's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Ryan K. Inch, P.E.
Wetzel County Sanitary Landfill

12/16/13

Date

Public Notice begin:

Date

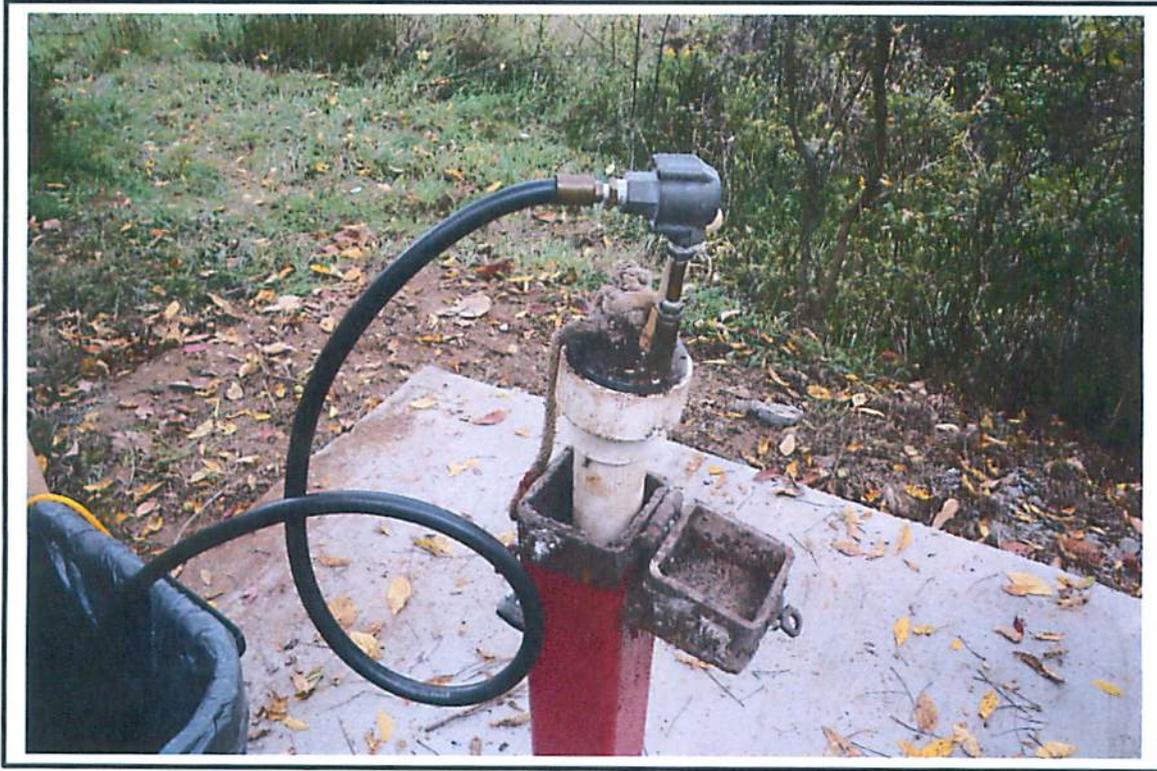
Public Notice end:

Date

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

Date

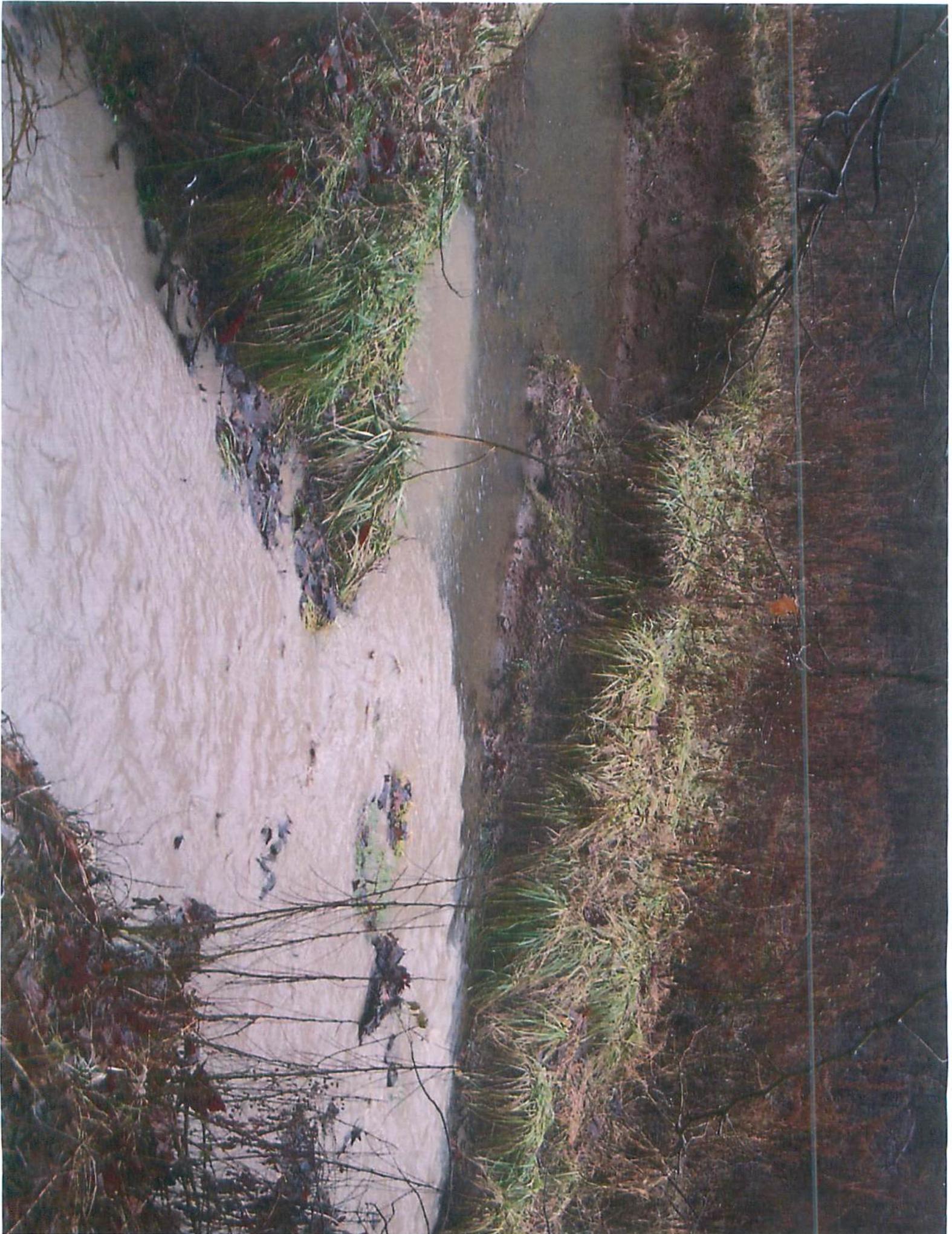
Photo Attachment



10/10/2012 – Fixed cap on Monitoring Well # 5 prohibits sampler from making groundwater elevation measurement.







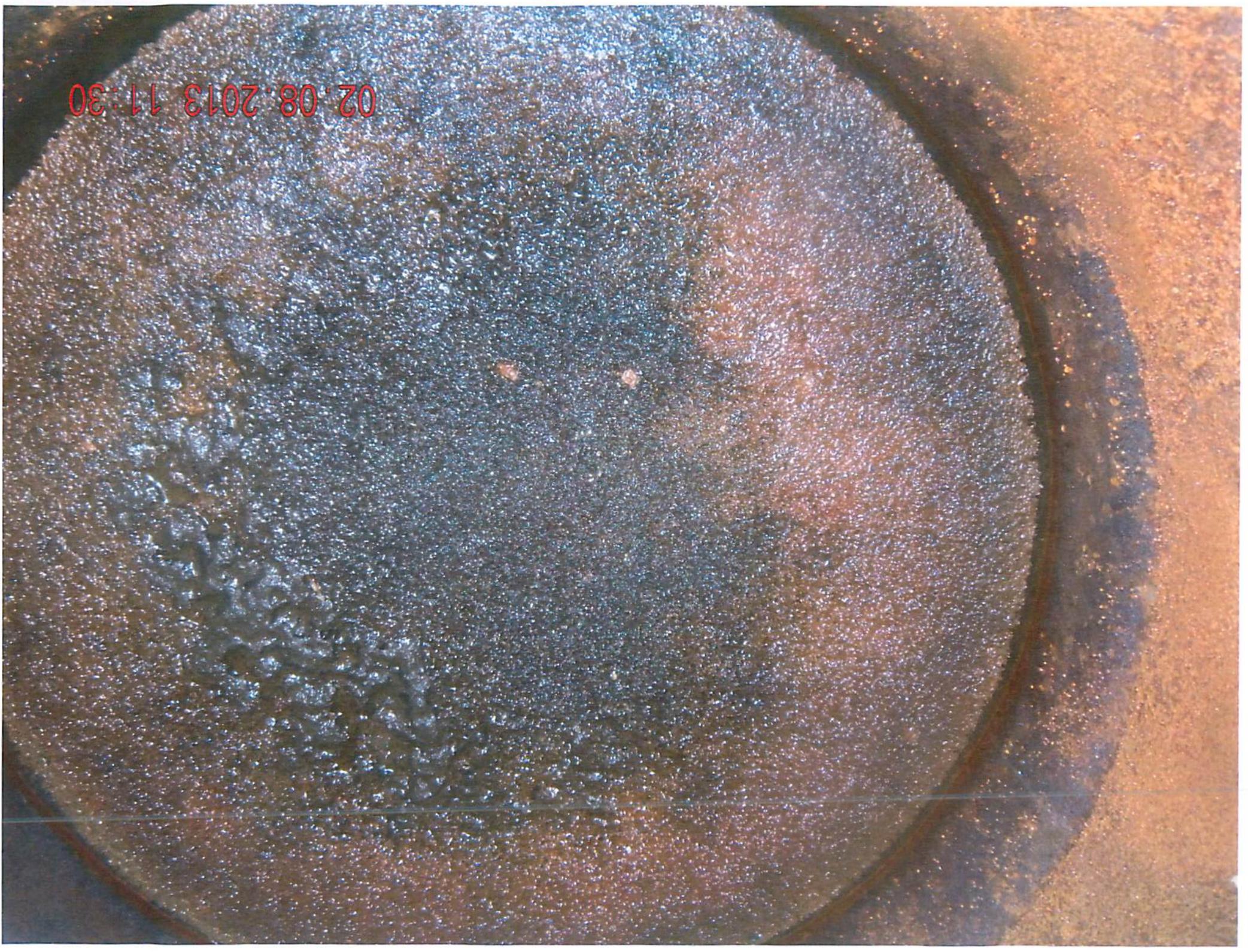


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Table One:
Wetzel County Landfill DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - February 2011 - February 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
2/2011	Ammonia Nitrogen	Lbs/Day	3.3	3.4	3%	X	-	-
2/2011	TSS	Lbs/Day	18	22.2	23%	X	-	-
3/2011	Ammonia Nitrogen	Lbs/Day	3.3	20.2	512%	-	-	X
4/2011	BOD5	Lbs/Day	25	37.4	50%	-	X	-
4/2011	TSS	Lbs/Day	18	26.5	47%	-	X	-
4/2011	Ammonia Nitrogen	Lbs/Day	3.3	16.2	391%	-	-	X
4/2011	Fecal Coliform	Cts./100ml	200	1027	414%	-	-	X
10/2011	Ammonia Nitrogen	Lbs/Day	3.3	7.6	130%	-	X	-
10/2011	Fecal Coliform	Lbs/Day	200	300	50%	-	X	-
12/2011	TSS	Lbs/Day	18	21.1	17%	X	-	-
2 / 2012	BOD5	Lbs/Day	25	39.5	58%	-	X	-
2/2012	TSS	Lbs/Day	18	24.8	38%	X	-	-
2/2012	Ammonia Nitrogen	Lbs/Day	3.3	5.3	61%	-	X	-
2/2012	Iron	Lbs/Day	0.8	1.35	69%	-	X	-
2/2012	Total Aluminum	Lbs/Day	0.21	0.23	10%	X	-	-
5/2012	Flow	MGD	0.08	0.0845	6%	X	-	-
5/2012	TSS	Lbs/Day	18	21.6	20%	X	-	-
5/2012	Iron	Lbs/Day	0.8	0.83	4%	X	-	-
11/2012	BOD5	Lbs/Day	25	47.6	90%	-	X	-
11/2012	Ammonia Nitrogen	Lbs/Day	3.3	8.3	152%	-	X	-
12/2012	BOD5	Lbs/Day	25	29.5	18%	X	-	-
12/2012	Ammonia Nitrogen	Lbs/Day	3.3	5.1	55%	-	X	-
12/2012	Iron	Lbs/Day	0.8	0.92	15%	X	-	-
1/2013	Ammonia Nitrogen	Lbs/Day	3.3	10.5	218%	-	X	-
2/2013	Ammonia Nitrogen	Lbs/Day	3.3	20.8	530%	-	-	X
2/2013	Iron	Lbs/Day	0.8	1.42	78%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - February 2011 - February 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
2/2011	Ammonia Nitrogen	Lbs/Day	6.7	6.8	1%	X	-	-
3/2011	Ammonia Nitrogen	Lbs/Day	6.7	23.9	257%	-	X	-
3/2011	Ammonia Nitrogen	Lbs/Day	6.7	16.6	148%	-	X	-
4/2011	Ammonia Nitrogen	Lbs/Day	6.7	18.9	182%	-	X	-
4/2011	Ammonia Nitrogen	Lbs/Day	6.7	13.5	101%	-	X	-
4/2011	Fecal Coliform	Cts./100ml	400	1820	355%	-	X	-
4/2011	Fecal Coliform	Cts./100ml	400	580	45%	X	-	-
10/2011	Ammonia Nitrogen	Cts./100ml	6.7	9.2	37%	X	-	-
10/2011	Fecal Coliform	Cts./100ml	400	2000	400%	-	X	-
2/2012	Ammonia Nitrogen	Lbs/Day	6.7	10.6	58%	X	-	-
11/2012	Ammonia Nitrogen	Lbs/Day	6.7	10	49%	X	-	-
12/2012	Fecal Coliform	Cts./100ml	400	909	127%	-	X	-
1/2013	Ammonia Nitrogen	Lbs/Day	6.7	12.46	86%	X	-	-
1/2013	Ammonia Nitrogen	Lbs/Day	6.7	8.59	28%	X	-	-
2/2013	Ammonia Nitrogen	Lbs/Day	6.7	27.77	314%	-	X	-
2/2013	Ammonia Nitrogen	Lbs/Day	6.7	13.92	108%	-	X	-
2/2013	Iron	Lbs/Day	1.53	1.86	22%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	18	21	4

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Wetzel Co. Sanitary Landfill

Receiving Stream:

Ohio River

Treatment System Design Maximum Flow: 0.08 MGD

Treatment System Actual Average Flow: ~ 0.055 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#													
			2a	2b	3c	5ai	5aii	5aiii								
a)	Amount of Pollutant Released	1 to 3	1	1	2	1	1	1								
b)	Toxicity of Pollutant	0 to 3	0	0	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	0	0	1	1	1	1								
d)	Length of Time	1 to 3	1	1	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	0	0	1	1	1	1								
Average Potential for Harm Factor			0.4	0.4	1.2	1	1	1	No							
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	2	3	1	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)	\$1,500		\$1,500
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	(\$3,560)
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$2,030)
Penalty =			\$33,570

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$1,500
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	\$1,500
Comments: Avoided cost of DMR sampling.	