



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**

TO: The Honorable Edgar Fortney, Mayor
Town of Newburg
PO Box 40
Newburg, WV 26410

DATE: January 7, 2011

ORDER NO.: 7142

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 Town of Newburg (hereinafter "Newburg").

FINDINGS OF FACT

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

1. Newburg operates a wastewater treatment plant (WWTP) located in Newburg, Preston County, West Virginia. Newburg was issued WV/NPDES Water Pollution Control Permit No. WV0024597 on January 7, 2007, with an expiration date of December 7, 2011. Section C.12 of the permit required a plan for inflow and infiltration remediation to be submitted with 90 days of issuance of permit. This plan has not been submitted to the WVDEP.
2. On June 30, 2009, West Virginia Department of Environmental Protection (WVDEP) personnel inspected Newburg's WWTP. Notices of Violation (NOV) No. W-09-39-19-202 and W-09-39-20-202 were issued. The following deficiencies were observed:
 - a) Plant was septic, excessive sludge in equalization basin, aeration basin, and clarifier, sludge in sand filters preventing proper drainage, a violation of its WV/NPDES permit Appendix A, Section II (Operation & Maintenance).
 - b) Discharge very odoriferous, sludge and solids on bank of receiving stream at discharge, a violation of Legislative Rule Title 47, Series 3, Section 2 (47CSR3-2).

Promoting a healthy environment.

3. On July 21, 2009, WVDEP personnel inspected Newburg's WWTP. NOV No. W-09-39-21-202 was issued. The following deficiencies were observed:
 - a) Barscreen was full and needed cleaned, plant was septic, excessive sludge in equalization basin, aeration basin and clarifier, sludge in sand filters preventing proper drainage, a violation of its WV/NPDES permit Appendix A, Section II (Operation & Maintenance).
 - b) Discharge very odoriferous, sludge and solids on bank of receiving stream at discharge, a violation of 47CSR3-2.

4. On August 25, 2009, WVDEP personnel inspected Newburg's WWTP. NOV No. W-09-39-23-202 was issued. The following deficiencies were observed:
 - a) Flowmeter needed annual calibration, barscreen was full and needed cleaned, plant was septic, excessive sludge in equalization basin, aeration basin and clarifier, inadequate aeration (aeration heads had been removed, presumably to be cleaned and were sitting on lab counter), sludge in sand filters preventing proper drainage, a violation of its WV/NPDES permit Appendix A, Section II (Operation & Maintenance).
 - b) Discharge very odoriferous, sludge and solids on bank of receiving stream at discharge, a violation of 47CSR3-2.

5. On March 19, 2010, WVDEP personnel inspected Newburg's WWTP. NOVs No. W-10-39-02-202, W-10-39-03-202, W-10-39-04-202 were issued. The following deficiencies were observed:
 - a) Flowmeter needed annual calibration, aeration heads still on lab counter where they had been since August 2009, barscreen full and needed cleaned, bucket full of debris from a previous cleaning sitting out in open uncovered, plant was septic, excessive sludge in equalization basin, aeration basin and clarifier, inadequate aeration, sludge in sand filters preventing proper drainage, floating sludge in full filters, filters had overflowed recently, a violation of its WV/NPDES permit Appendix A, Section II (Operation & Maintenance).
 - b) Discharge very odiferous, sludge and solids on bank of receiving stream at discharge, a violation of 47CSR3-2.

6. A facility inspection including sampling was performed on April 5, 2010 by WVDEP personnel. NOV No. W-10-39-10-202 was issued for failure to maintain and operate a sewage treatment plant in accordance with permit. The following conditions were observed:
 - a) Flowmeter needed calibrated, barscreen needed cleaned, plant was septic, excessive sludge buildup throughout plant, excessive foam on aeration, no chlorination or dechlorination tablets in dispenser, sand filters overflowing, floating sludge in sand filters, a violation of WV/NPDES permit Appendix A, Section II (Operation & Maintenance).
 - b) Unreported spill, a violation of 47CSR10-5.12.e.

- c) Discharge Monitoring Reports (DMRs) not submitted since second quarter of 2009, a violation of WV/NPDES permit Appendix A, Section III.
 - d) Discharge very odiferous with solids/sludge on banks at discharge, a violation of 47CSR3-2.
 - e) DEP sampling results are included in Attachment A and are as follows:
 - i. TSS 30 mg/l. 30 mg/l is average monthly limit, 60 mg/l is max daily limit.
 - ii. BOD 44 mg/l. 10 mg/l is average monthly limit, 20 mg/l max daily limit.
 - iii. Ammonia nitrogen 27 mg/l. 8 mg/l is average monthly limit, 16 mg/l is max daily limit.
 - iv. Fecal coliform >60000 cnts/100ml. 200 cnts/100 is average monthly limit, 400 cnts/100 is max daily limit.
7. On October 22, 2010, WVDEP personnel reviewed Newburg's DMRs. DMRs for the second quarter 2008, fourth quarter 2009 and first, second and third quarters of 2010 have not been submitted. All DMRs are missing the second page. Refer to Attachment A. The excursions from the DMRs and WVDEP sampling can be further described as follows:
- a) Minor Violations-6
 - b) Moderate Violations-4
 - c) Major Violations-3
 - d) Failure to submit DMRs quarterly-5
8. On December 9, 2010, WVDEP and Newburg conducted a meeting by telephone to discuss the terms of this Order. Subsequent to that meeting, Newburg has submitted financial information to evaluate its ability to pay a civil administrative penalty. The information has been evaluated and it has been determined that Newburg has a reduced ability to pay a civil administrative penalty.

ORDER FOR COMPLIANCE

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

1. Newburg shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of the effective date of this Order, Newburg shall submit for approval a proposed corrective action plan and schedule, outlining action items and completion dates for how and when Newburg 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
NE Regional Environmental Enforcement Office
HC63 Box 2545
Romney, WV 26757**

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. Because of Newburg's Legislative Rule and permit violations, Newburg shall be assessed a civil administrative penalty of four thousand seven hundred fifty-seven dollars (\$4,757) 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. Newburg 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, Newburg 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, Newburg 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 Newburg 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, Newburg 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 Newburg 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 Newburg 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 Newburg (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 Newburg 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 Newburg 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 Newburg, its successors and assigns.
7. This Order shall terminate upon Newburg's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RECEIVED
SEP 22 2011
ENVIRONMENTAL
ENFORCEMENT

Edgar E. Fortney
Mr. Edgar Fortney, Mayor
Town of Newburg

9-12-11
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

RECEIVED
SEP 19 2011
EE - NORTHEAST



1: Plugged sand filters with floating sludge, March 2010



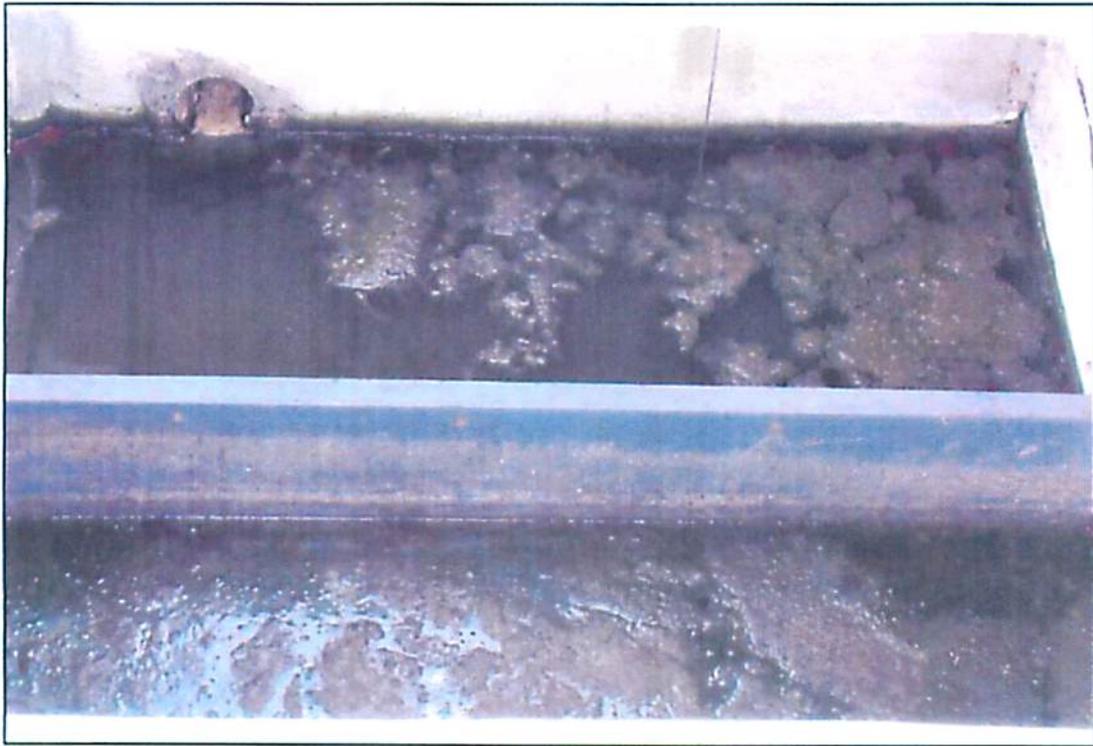
2: Staining from overflowing sand filter, March 2010



3: Discharge point, April 2010



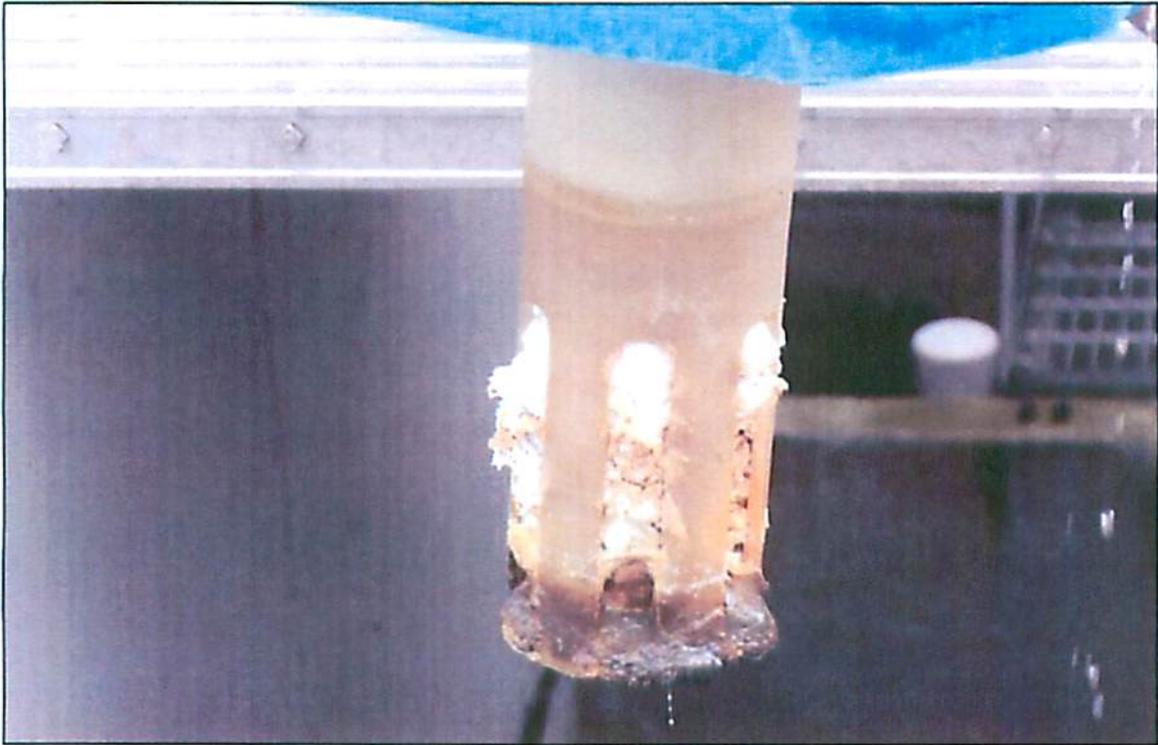
4: Overflowing sand filters, April 2010



5: Sludge in chlorine contact chamber, April 2010



6: Uncleaned bar screen, April 2010



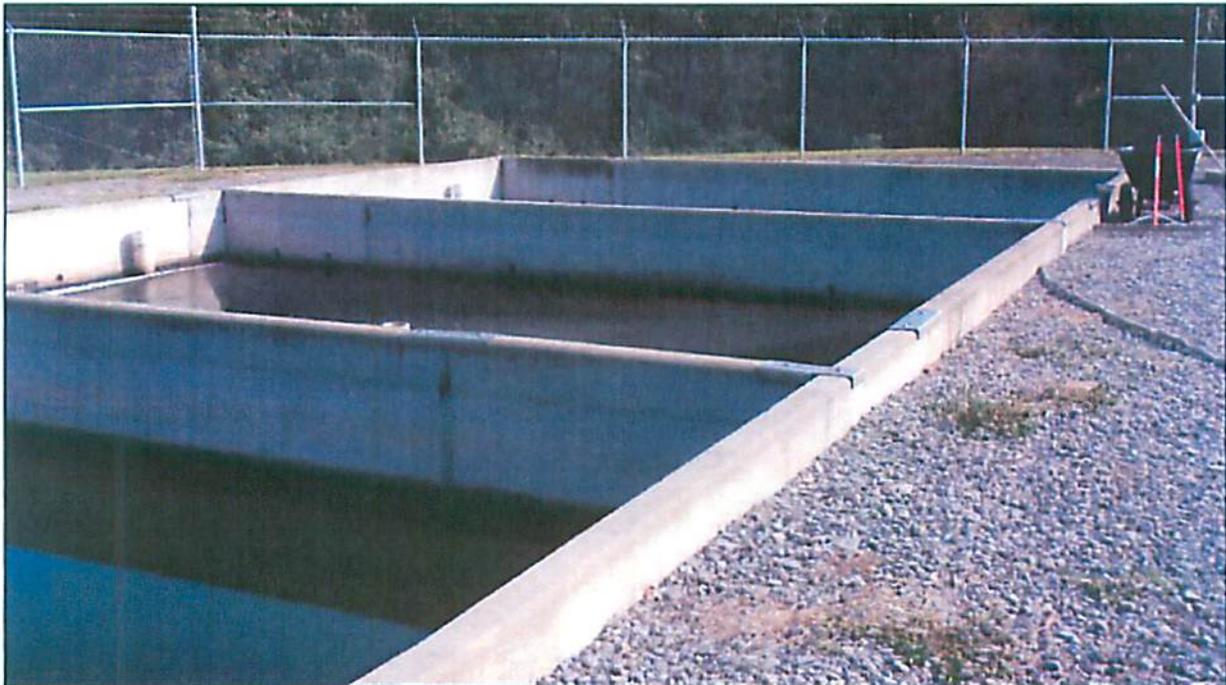
7: Chlorination tube, April 2010



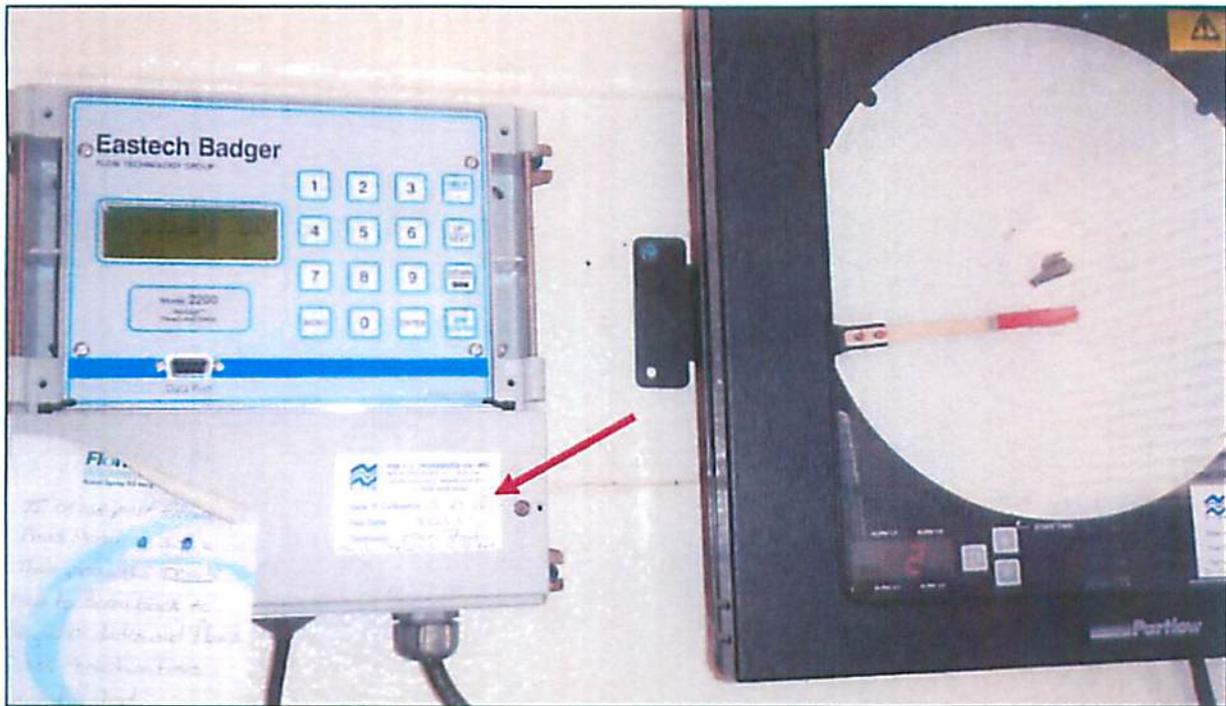
8: Unsecured waste from previous barscreen cleaning, April 2010



9: Tubs of chlor and dechlor stored onsite, April 2010



10: Sand filters, some plugging, August 2009



11: Flowmeter, notice date calibrated, August 2009



12: Aerator heads lying on bench in lab, August 2009

Attachment A
(One page to follow.)

Outlet 001 DMR Exceedances - AVG. MONTHLY - Month/Year through Month/Year						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
10/08	ammonia nitrogen	mg/l	4.0	4.06	1%	X	-	-
04/09	BOD	mg/l	10.0	72.66	627%	-	-	X
04/09	ammonia nitrogen	mg/l	8.0	10.5	31%	X	-	-
04/09	fecal coliform	cnts/100	200.00	325	63%	-	X	-
07/09	ammonia nitrogen	mg/l	4.00	6.1	53%	-	X	-

Outlet 001 WV/NPDES Permit Exceedances - MAX. DAILY - Month/Day/Year through Month/Day/Y						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
10/08	flow	mgd	0.04	0.28	700%	-	-	X
11/08	flow	mgd	0.04	0.052	49%	X	-	-
04/09	flow	mgd	0.04	0.046	31%	X	-	-
04/09	BOD	mg/l	20.00	72.66	263%	-	X	-
07/09	flow	mgd	0.04	0.051	46%	X	-	-
04/10	BOD	mg/l	20.00	44	120%	-	X	-
04/10	ammonia nitrogen	mg/l	16.00	27	69%	X	-	-
04/10	fecal coliform	cnts/100	400.00	60,000	14900%	-	-	X

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	6	4	3

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Town of Newburg

Receiving Stream:

Racoon Creek

Treatment System Design Maximum Flow: 0.035 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#												
			5a	5b	6a	6b	6d	7a	7b	7c	7d				
a)	Amount of Pollutant Released	1 to 3	2	2	2	1	2	1	1	2	1				
b)	Toxicity of Pollutant	0 to 3	1	1	1	0	1	1	1	1	0				
c)	Sensitivity of the Environment	0 to 3	1	1	1	0	1	1	1	1	0				
d)	Length of Time	1 to 3	3	3	3	1	3	1	1	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	2	2	2	0	2	1	1	1	0				
Average Potential for Harm Factor			1.8	1.8	1.8	0.4	1.8	1	1	1.2	0.4	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	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
5a	Moderate	Major	\$4,800	1	\$4,800
5b	Moderate	Major	\$4,800	1	\$4,800
6a	Moderate	Major	\$4,800	1	\$4,800
6b	Minor	Major	\$1,700	1	\$1,700
6d	Moderate	Major	\$4,800	1	\$4,800
7a	Minor	Minor	\$1,000	6	\$6,000
7b	Minor	Moderate	\$1,500	4	\$6,000
7c	Moderate	Major	\$4,200	3	\$12,600
7d	Minor	Major	\$1,700	5	\$8,500
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
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					\$54,000

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		\$10,800
6.2.b.4 - Compliance/noncompliance history	40		\$21,600
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		\$81,673	(\$81,673)
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			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$49,243)
Penalty =			\$4,757

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments:	6.2.b.10 monetary decrease reflects reduced ability to pay a civil administrative penalty.