



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
HAZARDOUS WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18**

TO: West Virginia Steel Corporation
Robert Gibson, Safety Officer
P.O. Box 1029
Poca, WV 25159

DATE: June 1, 2015

ORDER NO.: HW-15-009

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 18, Section 1, to West Virginia Steel Corporation (hereinafter "WV Steel").

FINDINGS OF FACT

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

WVD982566622

1. WV Steel operates a steel fabrication facility located in Poca, Putnam County, West Virginia and has been assigned EPA ID No. WVD982566622.
2. On November 14, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of Code of Federal Regulations were observed and documented:
 - a. 40CFR262.11-The facility failed to perform a hazardous waste determination.
 - b. 40CFR262.34(a)(2)-The facility failed to mark the accumulation start date on containers of hazardous waste.
 - c. 40CFR262.34(a)(3)-The facility failed to label containers of hazardous waste with the words, "Hazardous Waste."

Promoting a healthy environment.

- d. 40CFR262.34(d)(5)(ii)-The facility failed to post emergency information next to telephones.
- e. 40CFR265.173(a)-The facility failed to keep containers of hazardous waste closed.
- f. 40CFR265.174-The facility failed to perform weekly inspections of hazardous waste storage areas.

As a result of the aforementioned violations, a Notice of Violation (NOV) was issued to WV Steel.

WVD005004791

- 3. WV Steel operates a facility located in Charleston, Kanawha County, West Virginia and has been assigned EPA ID No. WVD005004791.

- 4. On February 2, 2015 WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the Code of Federal Regulations were observed and documented:
 - a. 40CFR279.22(c)(1) – The facility improperly labeled storage units/containers with used oil.
 - b. 40CFR261.5(g)(2) – The facility exceeded the hazardous waste storage limitation of 1,000kg on-site.
 - c. 40CFR262.34(a)(3) – The facility failed to label containers clearly with the words "Hazardous Waste."
 - d. 40CFR262.34(a)(2) – The facility failed to label containers clearly with the accumulation start date.
 - e. 40CFR262.11 – The facility failed to make a hazardous waste determination.
 - f. 40CFR262.12 – The facility failed to notify for all generated hazardous waste streams.
 - g. 40CFR279.22(d) – The facility to contain and clean up released used oil.
 - h. 40CFR262.34(d) – The facility stored hazardous waste for more than one hundred eighty (180) days.

As a result of the aforementioned violations, an NOV was issued to WV Steel.

- 5. On March 12, 2015, WVDEP personnel and representatives of WV Steel met to discuss the terms and conditions of this Order.

- 6. On March 20, 2015, WV Steel submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated WV Steel's ability to pay a civil administrative penalty.

- 7. On May 26, 2015, WVDEP personnel and representatives of WV Steel met to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 18, Section 1 of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. WV Steel shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Upon the effective date of this Order, WV Steel shall immediately take measures to perform a hazardous waste determination for materials in and around the paint storage room.
3. Upon the effective date of this Order, WV Steel shall immediately mark containers of hazardous waste with an accumulation start date and the words "Hazardous Waste."
4. Upon the effective date of this Order, WV Steel shall immediately keep containers of hazardous waste closed except when adding or removing waste.
5. Upon the effective date of this Order, WV Steel shall immediately post emergency information next to telephones that includes, but is not limited to, the name and number of the emergency coordinator, the location of fire extinguishers and spill control equipment, and the number of the fire department.
6. Upon the effective date of this Order, WV Steel shall immediately start performing weekly inspections of its hazardous waste storage area. The inspection checklist shall document the date and time of the inspection, the name of the inspector, a notation of any observations made, and the date and nature of any repairs or remedial actions taken. The container inspection checklist shall include, but not be limited to, the presence of any leaking/deteriorated containers, appropriate container labeling; tightness of lids, nuts, rings, etc.; and the placement of containers to minimize potential for external puncture.
7. Within thirty (30) days of the effective date of this Order, WV Steel shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when WV Steel will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to EPA ID No. WVD982566622 and Order No. HW-15-009. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
Jamie Fenske
131 A Peninsula St.
Wheeling, WV 26003**

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.

8. Because of WV Steel's Code of Federal Regulations violations, WV Steel shall be assessed a civil administrative penalty of twenty-five thousand seventy-seven dollars (\$25,077) to be paid to the West Virginia Department of Environmental Protection for deposit in the Hazardous Waste 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. WV Steel hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 18, Section 20 of the Code of West Virginia. Under this Order, WV Steel 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, WV Steel 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 WV Steel 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, WV Steel 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 WV Steel becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and WV Steel 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 WV Steel 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 WV Steel (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 WV Steel 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 WV Steel 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 WV Steel, its successors and assigns.
7. This Order shall terminate upon WV Steel's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RECEIVED

JUN 15 2015

**ENVIRONMENTAL
ENFORCEMENT**

Robert Gibson
Robert Gibson, Safety Officer
West Virginia Steel Corporation

June 8, 2015
Date

Public Notice begin:

Date

Public Notice end:

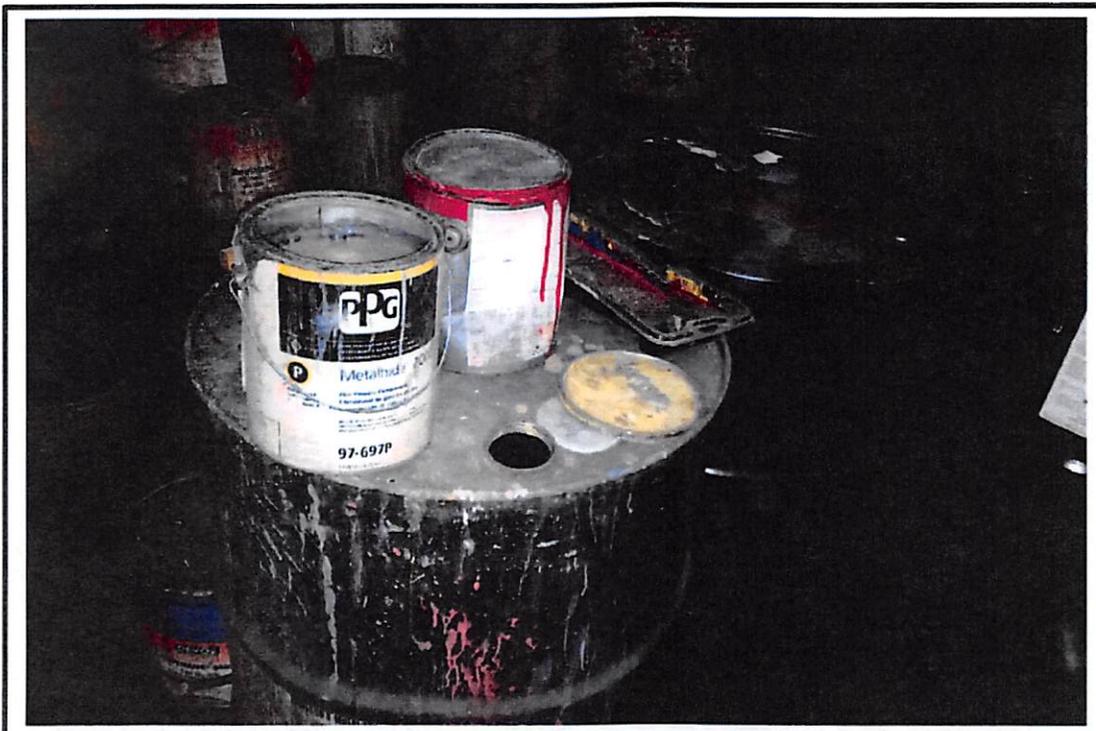
Date

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

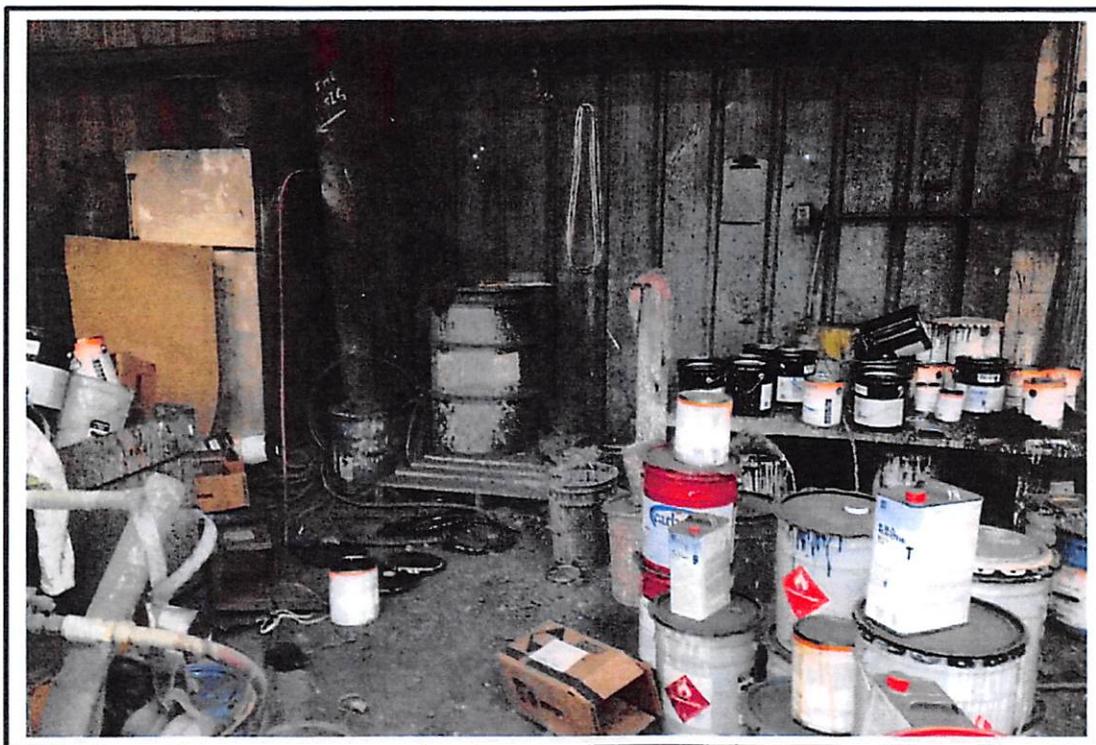
Date



11/14/2014 – Containers of undetermined contents in paint storage room.



11/14/2014 – Open containers in paint storage room.



11/14/2014 – Paint mixing area.



11/14/2014 – Containers of useable products, hazardous waste and undetermined materials.



2/2/15 - Used Oil Not Labeled



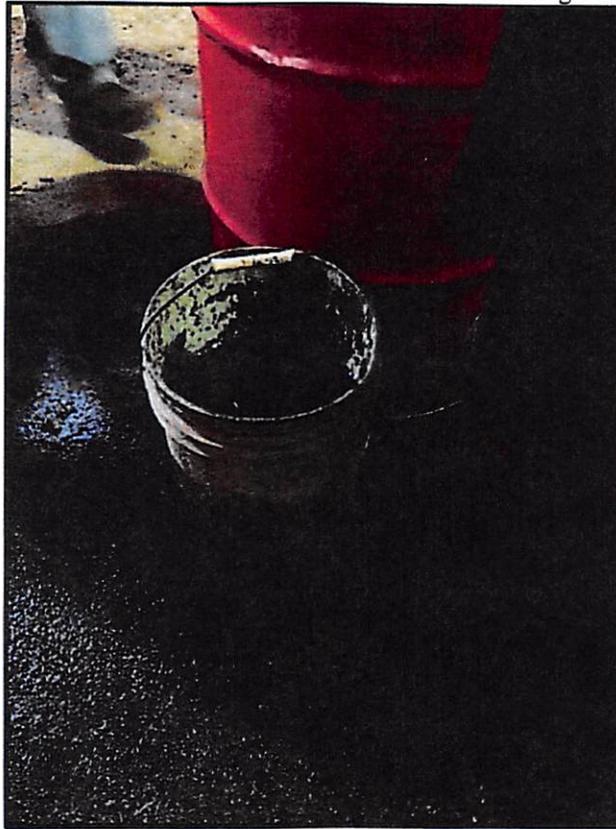
2/2/15 - Hazardous Waste Drums



2/2/15 - Hazardous Paint Waste



2/2/15 - Hazardous Material in Aerosols



2/2/15 - Used Oil Spillage and Improper Container



2/2/15 - Used Oil Drums Spilled and Mismanaged



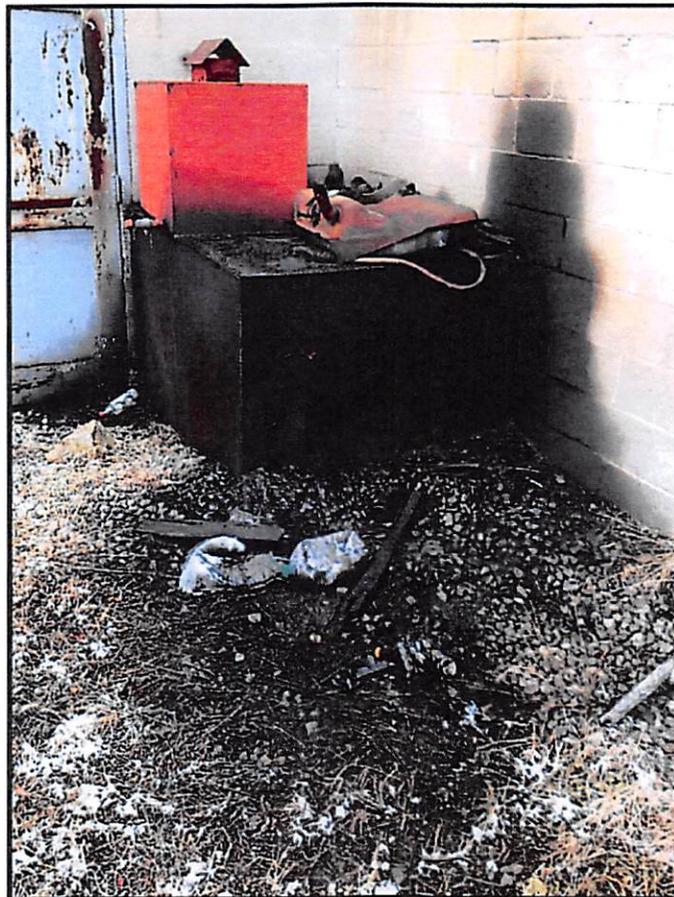
2/2/15 - Used Oil Drums Not Labeled



2/2/15 - Used Oil Drums Not Labeled



2/2/15 - Leaking Compressor



2/2/15 - Leaking Compressor

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: West Virginia Steel Corp. EPA ID Number: WV982566622 and WVD005004791

Generator Classification: SQG

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a.	2b.	2c.	2d.	2e.	2f.	4a.	4b.	4c.	4d.	4e.	4f.	4g.
a)	Harm to RCRA Program	1 to 3	2	1	1	1	1	2	1	2	1	1	2	1	2
b)	Probability of Exposure	0 to 3	1	0	0	0	1	0	0	1	0	0	1	0	1
c)	Potential Seriousness of Contamination	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
Average Potential for Harm Factor			1.3	0.7	0.7	0.7	1	1	0.7	1.3	0.7	0.7	1.3	0.7	1.3
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	2	2	1	1	2	2	2	2	2	2	2	2

Potential for Harm Factors

- 1a. - Harm to the RCRA Program
 - All regulatory requirements are fundamental to the continued integrity of the RCRA Program
 - Violations that undermine the statutory or regulatory purposes or procedures for implementing the RCRA program may have serious implications and merit substantial penalties. Examples include but are not limited to: failure to notify as a generator, failure to respond to an info request, failure to prepare or maintain a manifest, and operating / disposal without a permit

- 1b. - Probability of Exposure - factors to be considered include but are not limited to: evidence of a release, evidence of waste mismanagement, and adequacy of provisions for detecting and preventing a release

- 1c. - Potential Seriousness of Contamination - factors to consider include but are not limited to quantity and toxicity of wastes (potentially) released, likelihood or fact of transport by way of environmental media (e.g. air and groundwater), and existence, size and proximity of receptor populations (e.g. local residents, fish, wildlife) and sensitive environmental media (e.g. surface waters and aquifers.)

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

		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
2a.	Moderate	Moderate	\$3,330	1	\$3,330
2b.	Minor	Moderate	\$1,335	1	\$1,335
2c.	Minor	Moderate	\$1,335	1	\$1,335
2d.	Minor	Minor	\$670	1	\$670
2e.	Minor	Minor	\$1,000	1	\$1,000
2f.	Minor	Moderate	\$1,500	1	\$1,500
4a	Minor	Moderate	\$1,335	1	\$1,335
4b	Moderate	Moderate	\$3,330	1	\$3,330
4c	Minor	Moderate	\$1,335	1	\$1,335
4d	Minor	Moderate	\$1,335	1	\$1,335
4e	Moderate	Moderate	\$3,330	1	\$3,330
4f	Minor	Moderate	\$1,335	1	\$1,335
4g	Moderate	Moderate	\$3,330	1	\$3,330
4h	Moderate	Moderate	\$3,330	1	\$3,330
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					\$27,830

Penalty Adjustment Factors

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factors

6.2.b.1 - Good faith efforts to comply or lack of good faith - 10% decrease to 10% increase

6.2.b.2 - Degree of Willfulness and / or Negligence - 0% to 30% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.4 - History of Non-Compliance - 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

6.2.b.5 - Ability to pay a civil administrative penalty - 0% to 100% decrease

6.2.b.6 - Economic Benefit of non-compliance

6.2.b.7 - Staff Investigative Costs

6.2.b.8 - Other relevant factors determined on a case-by-case basis

Base Penalty Adjustments

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Good Faith - Increase			\$0
6.2.b.1 - Good Faith - Decrease		10	(\$2,783)
6.2.b.2 - Willfulness and/or negligence	10		\$2,783
6.2.b.3 - Cooperation with the Secretary		10	(\$2,783)
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.5 - Ability to Pay an Administrative Penalty			\$0
6.2.b.6 - Economic Benefit (flat monetary increase)	\$0		\$0
6.2.b.7 - Staff Investigative Costs (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Cost (flat monetary increase)	\$30		\$30
Penalty Adjustments			(\$2,753)
Penalty =			\$25,077

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: No economic benefit warranted.	