



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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Harold D. Ward, Cabinet Secretary
dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE CHAPTER 22, ARTICLE 11**

TO: Bluewell PSD
Attn: Bryan Rotenberry
P.O. Box 3066
Bluefield, WV 24701

DATE: December 3, 2025
ORDER NO.: 10320

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 22-11-1 et seq. to Bluewell PSD (hereinafter “Bluewell”).

FINDINGS OF FACT

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

1. Bluewell operates a wastewater treatment plant located in Montcalm, Mercer County, West Virginia. Bluewell was reissued WV/NPDES Water Pollution Control Permit No. WV0028134 on June 12, 2019 and June 21, 2024.
2. On November 12, 2019, West Virginia Department of Environmental Protection (WVDEP) issued Order No. 9040 to Bluewell. Among other violations, the Order was issued in response to discharges of untreated sewage from Bluewell’s unpermitted outlets into waters of the State, which occurred on multiple occasions. Bluewell’s Plan of Corrective Action (POCA), dated August 20, 2020, was submitted to fulfill the requirement of the Order and was subsequently approved by WVDEP. The approved POCA included a schedule for completion of a sewer collection system upgrade by July 2024. In addition, the approved POCA included a schedule for a wastewater treatment

plant upgrade. Construction for the wastewater treatment plant upgrade was scheduled to begin in January 2024 and be completed by August 2025.

3. On August 8, 2023, WVDEP personnel conducted an investigation in response to a complaint regarding an overflowing manhole. During the investigation, violations of the following sections of West Virginia State Code, West Virginia Legislative Rules, and the WV/NPDES permit were observed and documented:
 - a. 22-11-8(b)(1) and Section C.22 – Bluewell discharged wastes into waters of the State from an unpermitted point. Specifically, raw sewage was spilling from a manhole into the adjacent stream.
 - b. 47CSR2 Section 3.2.b – Bluewell caused conditions not allowable by creating sludge deposits in waters of the State. Specifically, sludge deposits in the stream occurred due to the unpermitted discharge of raw sewage from the aforementioned manhole.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W23-28-038-TN and W23-28-039-TN were issued to Bluewell.

4. On November 2, 2023, WVDEP personnel conducted an investigation in response to a reported spill. During the investigation, violations of the following sections of West Virginia State Code, West Virginia Legislative Rules, and the WV/NPDES permit were observed and documented:
 - a. 22-11-8(b)(1) and Section C.22 – Bluewell discharged wastes into waters of the State from an unpermitted point. Specifically, a lift station located at the intersection of Lorton Lick Rd and Simmons River Rd was discharging sewage into Lorton Lick Creek.
 - b. 47CSR2 Sections 3.2.a and c – Bluewell caused conditions not allowable by creating distinctly visible solids in waters of the State and odors in the vicinity of waters of the State. Specifically, there was a plume of sewage and an odor in Lorton Lick Creek due to the unpermitted discharge of raw sewage from the lift station.
 - c. Appendix A.IV.2.a – Bluewell failed to immediately report the spill to WVDEP's spill line upon becoming aware of the discharge. The spill was not reported until the day after it occurred.

As a result of the aforementioned violations, NOV No. W23-28-052-TN, W23-28-051-TN, and W23-28-053-TN were issued to Bluewell.

5. On July 16, 2024, WVDEP personnel conducted an investigation in response to a reported spill. During the investigation, violations of the following sections of West Virginia State Code, West Virginia Legislative Rules, and the WV/NPDES permit were observed and documented:
 - a. 22-11-8(b)(1) and Section C.22 – Bluewell discharged wastes into waters of the State from an unpermitted point. Specifically, a lift station located at the

intersection of Lorton Lick Rd and Simmons River Rd was discharging sewage into Lorton Lick Creek.

- b. 47CSR2 Sections 3.2.a and c – Bluewell caused conditions not allowable by creating distinctly visible solids in waters of the State and odors in the vicinity of waters of the State. There were solids, black coloration, strong odor, and sludge worms in the creek due to the unpermitted discharge of raw sewage.
- c. Appendix A.IV.2.a – Bluewell failed to immediately report the spill to WVDEP's spill line upon becoming aware of the discharge. WVDEP personnel conducted a review and did not find a spill report for the aforementioned incident.

As a result of the aforementioned violations, NOV Nos. W24-28-07163-MAB, W24-28-07162-MAB, and W24-28-07163-MAB were issued to Bluewell.

6. On October 3, 2024, WVDEP personnel conducted a telephone discussion with a representative of Bluewell. During the telephone discussion, Bluewell's representative stated that action items for the sewer collection system and wastewater treatment plant upgrade projects had not been completed in accordance with the approved POCA schedule for Order No. 9040. Furthermore, WVDEP personnel conducted a record review and determined that an extension request for the POCA had not been submitted by Bluewell. Therefore, Bluewell failed to comply with the terms and conditions of Order No. 9040 by failing to adhere to the approved POCA schedule, as outlined in Order for Compliance Item No. Two (2) of the Order, which is a violation of WV State Code 22-11-1 et seq.
7. On January 22, 2025, WVDEP personnel and representatives of Bluewell met to discuss the terms and conditions of this Order.
8. On February 4 and 19, 2025; March 5, 2025; and April 8, 2025, Bluewell submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Bluewell's ability to pay a civil administrative penalty.
9. On March 3, 2025, Bluewell submitted an extension request, dated February 21, 2025, for Order 9040's approved POCA (the POCA was dated August 20, 2020). On November 19, 2025, Bluewell submitted an updated POCA schedule (attached). The extension request for the previous POCA was subsequently approved by WVDEP personnel.

ORDER FOR COMPLIANCE

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

1. Bluewell shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Bluewell shall comply with the aforementioned POCA that was submitted to WVDEP on November 19, 2025 (attached), which has been incorporated into the terms and

conditions of this Order. Failure to adhere to the approved POCA and schedule is a violation of this Order.

3. Within twenty (20) days of the effective date of this Order, Bluewell shall submit for approval a proposed POCA and schedule, with interim provisions which will be implemented until the long-term project is complete, in addition to provisions for addressing all other violations outlined in the Findings of Fact section of this Order. The POCA shall outline action items and completion dates for how and when Bluewell will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The POCA shall make reference to WV/NPDES Permit No. WV0028134 and Order No. 10320. The POCA shall be submitted to:

Chief Inspector
Environmental Enforcement – Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304

Upon approval, the POCA and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable POCA and schedule or failure to adhere to the approved schedule is a violation of this Order.

4. Because of Bluewell's violations, Bluewell shall be assessed a civil administrative penalty of five thousand dollars (\$5,000) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule: Four hundred sixteen dollars and sixty-six cents (\$416.66) shall be submitted within thirty (30) days after the effective date of this Order and by the first day of each month thereafter for the next ten (10) months. Four hundred sixteen dollars and seventy-four cents (\$416.74) shall be submitted by the first day of the final month. 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
WVDEP
601 57th Street SE
Charleston, WV 25304

5. Upon its effective date, this Order shall supersede Order No. 9040.

OTHER PROVISIONS

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


Bryan Rotenberry

Bryan Rotenberry
Bluewell PSD

12-16-2025

Date

Public Notice begin:

Date

Public Notice end:

Date

Jeremy W. Bandy, Director
Division of Water and Waste Management

Date

Photo Log
Bluewell PSD - WV0028134 - Mercer



The spilling manhole and adjacent stream.



Pathway from the manhole into the stream.

Photo Log
Bluewell PSD - WV0028134 - Mercer



Downstream of the manhole.

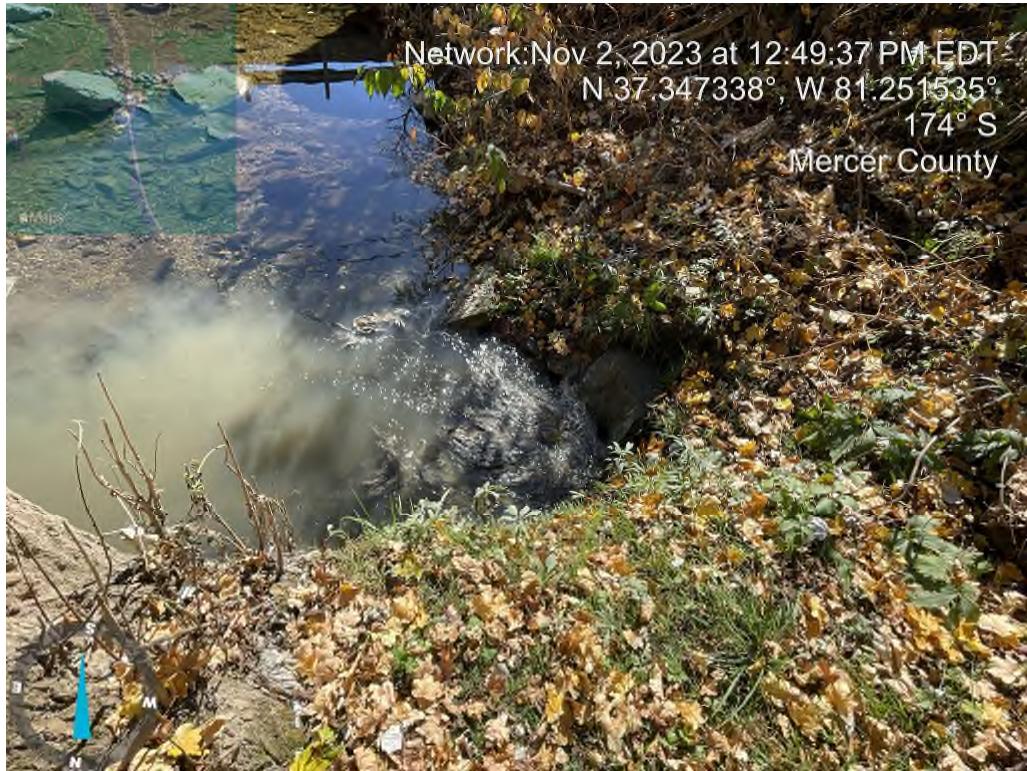


Looking upstream towards the manhole.

Photo Log
Bluewell PSD - WV0028134 - Mercer

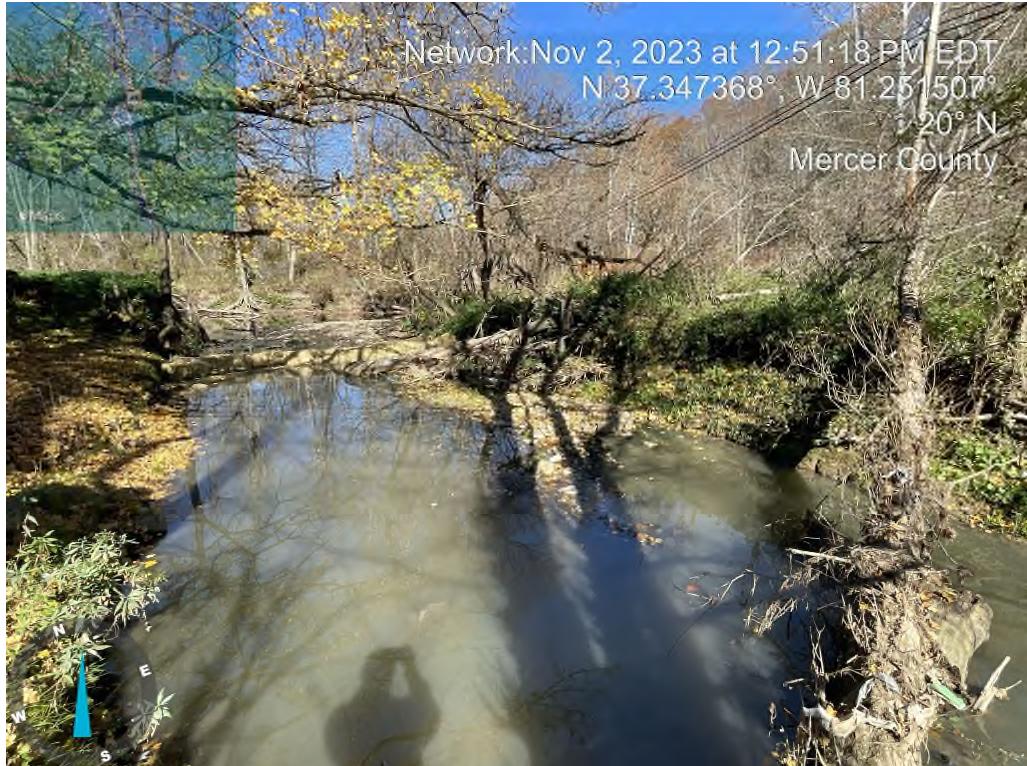


Plume against clear water upstream from discharge.



Unpermitted discharge point.

Photo Log
Bluewell PSD - WV0028134 - Mercer



Solids downstream of discharge point.



Failing containment of solids.

Photo Log
Bluewell PSD - WV0028134 - Mercer



Unpermitted Discharge Point With Visible Solids



Discolored Section Of Stream

Photo Log
Bluewell PSD - WV0028134 - Mercer



Solids And Discoloration In Stream



Solids And Discoloration In Stream

Photo Log
Bluewell PSD - WV0028134 - Mercer



Sludge Worms In Stream



Solids On Rocks On Edge Of Stream

BLUEWELL PUBLIC SERVICE DISTRICT
4146 COAL HERITAGE ROAD
P.O. BOX 3066
BLUEFIELD, WEST VIRGINIA 24701
304/589-3470
FAX: 304/589-6202

February 21, 2025

Samantha Blair
Department of Environmental Protection
Assistant Chief Inspector
Administrative Enforcement
601 57th Street
Charleston, WV 25304

Re: Plan of Corrective Action - February 4, 2021

The Bluewell Public Service District requests an extension to the Plan of Corrective Action (POCA) under the Order No. 9040. As discussed at our meeting on January 22, 2025 the district has been unable to move forward with the planned project to resolve the compliance issues related to this Order. The district is proposing to move forward with the project that resolve the issues related to this Order in phases. The districts engineer, E.L. Robinson, has proposes that we move forward with the project in four phases. The proposal for the first two phases and timelines for each are attached to this request for an extension. Phase I would be for the Montcalm system lift stations. Phase II is for the Montcalm Treatment Plant. Phase III is for the Bramwell Sewer System. Phase IV would be for the Montcalm collection system. Each phase could be done independently of the other phases and not necessarily in order.

As discussed in the meeting on January 22, 2025 the Bluewell PSD is in the process of consolidating with the Bramwell PSD. Bluewell PSD has been in an O&M agreement with Bramwell PSD since the 1990's. The consolation has taken much longer than anticipated and we now have approvals from Mercer County Commission, WV PSC and most recently, February 18, 2025, from the USDA. The two districts attorneys are currently scheduling a closing for this consolidation. The district has approved rates from the WV PSC that will go into effect once this is finalized. The rated increase improved by the WV PSC will provide an additional 12.91 percent in revenue.

Sincerely



Bryan Rotenberry
General Manager
Bluewell PSD

Bluewell PSD
Wastewater System Upgrade – Phase 1
IJDC No. 2025S-2706
Project Schedule
October 2025

<u>Milestones</u>	<u>Est. Completion Dates</u>
Merger of Bramwell PSD into Bluewell PSD completed	June, 2025
Rule 42 Completed for Filing IJDC Application	August, 2025
Submit PER and Funding Application to WVIJDC	September, 2025
WVIJDC Technical and Funding Review Comments	October, 2025
WVIJDC Recommendations	November, 2025
Submit Facilities Plan and Environmental Assessment Report To WVDEP	March, 2026
WVDEP Approval of Facilities Plan, Environmental Assessment with Categorical Exclusion Determination and issues FONSI	May, 2026
Complete Design Loan / Short Term Line of Credit Approval Process	October, 2026
Submit Plans and Specifications to WVDEP	October, 2026
Submit Applicable Permit Applications	November, 2026
WVDEP Approval of Plans	December, 2026
WVDEP and & IJDC Issues Project Binding Commitments	February, 2027
Submit PSC Filing for Approval of Project & Rate Increase	March, 2027
PSC Approval of Construction Project	August, 2027
All Permits and Clearances Received	July, 2027
WVDEP & IJDC Approval to Advertise For Bid	August, 2027
Open Bids	September, 2027
Loan Closing	November, 2027
Start Construction	December, 2027
Complete Construction	November, 2028

Bluewell PSD
Wastewater System Upgrade – Phase 2
IJDC No. 2022S-2232
Project Schedule
October 2025

<u>Milestones</u>	<u>Est. Completion Dates</u>
Merger of Bramwell PSD into Bluewell PSD completed	June, 2025
Submitted Funding Application to WVIJDC on Phase 1	September, 2025
Submit Changes in Proposed Costs and Funding for Phase 2	November, 2025
WVIJDC Recommendations	January, 2026
Submit Facilities Plan and Environmental Assessment Report To WVDEP	March, 2026
WVDEP Approval of Facilities Plan, Environmental Assessment with Categorical Exclusion Determination and issues FONSI	May, 2026
WVDEP Issues a Design loan	July. 2026
Prepare Rule 42 and Submit Design Loan to PSC for Approval	August, 2026
PSC Approval of Design Loan and Sewer Rates	January, 2027
WVDEP Design Loan Closing and Begin Design	February, 2027
Submit Plans and Specifications to WVDEP	February, 2028
Submit Applicable Construction Permit Applications	February, 2028
WVDEP Approval of Plans	May, 2028
WVDEP and Other Funding Programs Issues Project Binding Commitments	July, 2028
Submit PSC Filing for Approval of Project & Rate Increase	August, 2028
PSC Approval of Construction Project & Sewer Rates	January, 2029
All Permits and Clearances Received	January, 2029
WVDEP Approval to Advertise For Bid	February, 2029
Open Bids	April, 2029
Loan Closing	July, 2029
Start Construction	August, 2029
Complete Construction	December, 2030

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Bluewell PSD

Receiving Stream:

Lorton Lick Creek

Treatment System Design Maximum Flow: 0.4 **MGD**

Treatment System Actual Average Flow: **MGD** (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#									
			3a	3b	4a	4b	4c	5a	5b	5c	6	
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	0	1	1	0	1	
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	0	1	1	0	1	
d)	Length of Time	1 to 3	1	1	2	1	1	3	1	1	1	
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	0	1	1	0	1	
	Average Potential for Harm Factor		1	1	1.2	1	0.4	1.4	1	0.4	1	No
2)	Extent of Deviation Factor	Factor Range										
	Degree of Non-Compliance	1 to 3	3	3	3	3	1	3	3	3	3	

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

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

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly , >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
3a	Minor	Major	\$2,000	1	\$2,000
3b	Minor	Major	\$2,000	1	\$2,000
4a	Moderate	Major	\$4,200	1	\$4,200
4b	Minor	Major	\$2,000	1	\$2,000
4c	Minor	Minor	\$400	1	\$400
5a	Moderate	Major	\$4,400	1	\$4,400
5b	Minor	Major	\$2,000	1	\$2,000
5c	Minor	Major	\$1,700	1	\$1,700
6	Minor	Major	\$2,000	1	\$2,000
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
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$20,700

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase
 6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

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

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

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$2,070
6.2.b.4 - Compliance/noncompliance history -			\$0
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)			\$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	(\$2,070)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,070)
6.2.b.5 - Ability to Pay		65.99	(\$13,660)
Penalty Adjustments			(\$15,700)
Penalty =			\$5,000

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: Economic benefit not warranted.	