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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> 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: New Creek PSD  
Attn: Luke Hoover, Chairman  
P.O. Box 32  
New Creek, WV 26743

DATE: December 10, 2025  
ORDER NO.: 10370

**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 New Creek PSD.

**FINDINGS OF FACT**

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

1. New Creek PSD operates and maintains a sewage collection system located in New Creek, Mineral County, West Virginia. WV/NPDES Permit No. WV0085456 was reissued to New Creek PSD on January 5, 2022.
2. West Virginia Department of Environmental Protection (WVDEP) Program Support personnel attempted to contact representatives of New Creek PSD on multiple occasions to request the submittal of required Discharge Monitoring Reports (DMRs). Specifically, emails were sent by WVDEP Program Support personnel on August 8, 2022; August 22, 2022; and November 10, 2022. During phone calls on both August 15, 2022 and September 1, 2022, a representative of New Creek PSD stated that the missing DMRs would be submitted. On October 19, 2022, WVDEP Program Support mailed correspondence to New Creek PSD which again requested submittal of missing DMRs. To date, however, New Creek PSD has not submitted any of the required DMRs.

**Promoting a healthy environment.**

3. On September 14, 2023, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV/NPDES permit were observed and documented:

- a. Sections A.IU01 and D.2.b.1 – New Creek PSD did not submit quarterly DMRs for the sampling requirements at the New Creek Fire Department Car Wash.
  - b. Section D.2.b.2 – New Creek PSD did not submit quarterly Oil/Water Separator Logs for the WVDOH Maintenance Headquarters.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W23-29-070-CCS was issued to New Creek PSD.

4. On October 29, 2024, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV/NPDES permit were observed and documented:

- a. Section C.8 – New Creek PSD failed to provide quarterly written progress reports detailing what has been performed in relation to the implementation and accomplishments of the inflow and infiltration elimination program.
  - b. Sections A.IU01 and D.2.b.1 – New Creek PSD failed to submit quarterly DMRs for the New Creek Fire Department Car Wash.
  - c. Section D.2.b.2 – New Creek PSD failed to submit quarterly Oil/Water Separator Logs for the WVDOH Maintenance Headquarters.

As a result of the aforementioned violations, NOV No. W24-29-060-CCS was issued to New Creek PSD.

5. On February 13, 2025, WVDEP personnel conducted a record review from the time period of January 1, 2023 through December 31, 2024. During the review, violations of the following sections of the WV/NPDES permit were observed and documented:

- a. Section C.8 – New Creek PSD failed to provide any of the eight (8) quarterly written progress reports detailing what has been performed in relation to the implementation and accomplishments of the inflow and infiltration elimination program.
  - b. Sections A.IU01 and D.2.b.1 – New Creek PSD failed to submit any of the eight (8) quarterly DMRs for the New Creek Fire Department.
  - c. Section D.2.b.2 – New Creek PSD failed to submit any of the eight (8) quarterly Oil/Water Separator Logs for the WVDOH Maintenance Headquarters.

6. On October 30, 2025, WVDEP personnel and representatives of New Creek PSD met to discuss the terms and conditions of this Order.

7. On October 30, 2025, New Creek PSD submitted a plan of corrective action (POCA) that outlined action items for how and when New Creek PSD would achieve compliance with all terms and conditions of the WV/NPDES permit and all permit laws and rules. The POCA was subsequently approved by WVDEP personnel.

**ORDER FOR COMPLIANCE**

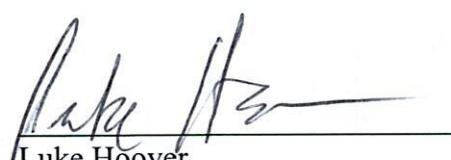
Now, therefore, in accordance with West Virginia State Code 22-11-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

1. New Creek PSD shall immediately take all measures to initiate compliance with the WV/NPDES permit.
2. Upon the effective date of this Order, New Creek PSD shall begin complying with the aforementioned approved plan of corrective action (POCA), dated October 30, 2025. The POCA (attached) has been incorporated into and become part of this Order. Failure to adhere to the approved POCA is a violation of this Order.
3. Because of New Creek PSD's violations, New Creek PSD shall be assessed a civil administrative penalty of five thousand one hundred sixty dollars (\$5,160) 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 thirty dollars (\$430) 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 eleven (11) months. 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

## **OTHER PROVISIONS**

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



Luke Hoover  
New Creek PSD

12/15/25

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

**New Creek Public Service District**  
**PO Box 32**  
**New Creek, WV 26743**  
**304-788-5475**

October 30, 2025

**Corrective Plan of Action for New Creek Public Service District**

**Timely Submittal of EDMRs and I&I Reports**

EDMRs will be submitted electronically using the state's designated system by the due dates specified in the NPDES permit to maintain compliance with state and federal requirements.

Inflow and infiltration reports, including ongoing studies, engineering analyses, and corrective actions taken, must be submitted according to the permit schedule. These reports will describe steps taken to mitigate excess flows and highlight progress made with any corrective projects.

All reports will be reviewed for accuracy and completeness, and any issues identified will be promptly addressed and documented in future submittals and internal records.

This plan will help New Creek PSD demonstrate to regulators that all monitoring data and engineering evaluations are submitted on time, all permit conditions are met, and any compliance deficiencies are promptly corrected.

Thank you



Brian L. Wilson  
General Manager, New Creek Public Service District  
304-788-5475 Office  
304-851-0755 Cell  
[brianwilson.ncpsd@gmail.com](mailto:brianwilson.ncpsd@gmail.com)

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:**

New Creek PSD

**Receiving Stream:**

North Branch Potomac River

**Treatment System Design Maximum Flow:** 0.524 **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	5c									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	0	0	0									
c)	Sensitivity of the Environment	0 to 3	0	0	0									
d)	Length of Time	1 to 3	3	3	3									
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0									
	<b>Average Potential for Harm Factor</b>		0.8	0.8	0.8	No								
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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
5a	Minor	Major	\$1,900	1	\$1,900
5b	Minor	Major	\$1,900	1	\$1,900
5c	Minor	Major	\$1,900	1	\$1,900
	FALSE	FALSE	FALSE	1	\$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
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$5,700

## **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		\$570
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	(\$570)
6.2.b.3 - Cooperation with the Secretary		10	(\$570)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$540)</b>
<b>Penalty =</b>			<b>\$5,160</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b> Economic benefit not warranted.	