



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

November 7, 2011

REGISTERED MAIL: RE 130 215 524 US

Ms. Diana Gritten-MacDonald, Manager
Environmental and Regulatory Services
Cowlitz County PUD
PO Box 3007
Longview, WA 98632

Amended Order Docket #	8832
Order Docket #	3676
Site Location	Swift No. 2 Hydroelectric Project

Re: Swift No. 2

Dear Ms. Gritten-MacDonald:

The Department of Ecology (Ecology) has issued the enclosed amended Administrative Order (Order) No. 8832 requiring you to replace conditions of Administrative Order No. 3676 with the language contained in this Amended Order.

All correspondence relating to this document should be directed to Deborah Cornett at the Department of Ecology, Southwest Regional Office, PO Box 47775, Olympia, WA 98504-7775.

If you have any questions concerning the content of the document, please contact Deborah Cornett at 360-407-7269.

Sincerely,

Robert W. Bergquist, LEED® AP
Southwest Region Manager
Water Quality Program

RB:BR:sb

Enclosure



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A)
WATER QUALITY CERTIFICATION TO)
Public Utility District No. 1,)
Cowlitz County, Washington)
with Chapter 90.48 RCW and the)
Rules and Regulations of the)
Department of Ecology)

FOURTH AMENDMENT
ORDER No. 8832
of Order No. 3676

To:

Cowlitz County PUD
PO Box 3007
961 12th Avenue
Longview, WA 98632

Amended Order Docket #	8832
Order Docket #	3676
Site Location	Swift No. 2 Dam Hydroelectric Project

The Department of Ecology (Ecology) has issued this amended Administrative Order (Order) Docket #8832 to amend Order Docket #3676 dated October 9, 2006, issued to Public Utility District No. 1, Cowlitz County, Washington.

This amendment is issued under the provisions of Chapter 90.48 RCW and Chapter 173-201A WAC.

ADMINISTRATIVE ORDER AMENDMENTS

Administrative Order No. 3676, dated October 9, 2006, is hereby amended as follows.

1. Section 3.0 Findings *Compliance with standards* 4) the following text:

“Class A water quality standards apply downriver from Swift No. 1 in the canal to Swift No 2 and in the bypass reach to Yale Lake. Lake Class water quality standards apply in Yale Lake at 487 feet msl since Yale Lake is a reservoir with a mean detention times of greater than 15 days. Mean detention time is calculated by dividing the reservoir’s mean annual minimum total storage by the thirty-day ten-year low-flow from the reservoir. Lake class conditions for temperature require that the licensee maintaining the highest attainable water quality condition that is feasible to achieve to best protect the biota.” shall be removed and replaced with the following:

“Lake water quality standards apply in Yale Lake at 490 feet since Yale Lake is a reservoir with a mean detention times of greater than 15 days. Mean detention time is calculated by dividing the reservoir’s mean annual minimum total storage by the thirty-day ten-year low-flow from the reservoir. Core Summer Salmonid Habitat water quality standards apply to all feeder streams to lakes and reservoirs with a mean detention time greater than fifteen days (WAC 173-201A-600(1)(a)(ii)). These standards apply to Swift No. 2 canal, and the bypass reach.”

2. Condition 4.1.1 the following text:

"1) The project shall comply with all water quality standards approved by the Environmental Protection Agency (currently codified in ch. 173-201A WAC), ground water quality standards (currently codified in ch. 173-200 WAC), and sediment quality standards (currently codified in ch. 173-204 WAC) and other appropriate requirements of state law. The conditions below set forth adaptive management processes and measures to achieve full compliance with standards and constitute a water quality attainment plan under the 2003 WAC 173-201A-510(5) for TDG and temperature." **shall be removed and replaced with the following:**

"1) The project shall comply with all water quality standards approved by the Environmental Protection Agency (currently codified in ch. 173-201A WAC), ground water quality standards (currently codified in ch. 173-200 WAC), and sediment quality standards (currently codified in ch. 173-204 WAC) and other appropriate requirements of state law. The project shall comply with the conditions of the compliance schedule for dams (WAC 173-201A-510(5)) where the project causes or contributes to a violation of the water quality standards."

3. Condition 4.1.18 the following text:

"The Project shall meet the Class A standards in the bypass reach and canal and the Lake Class standards in Yale Lake." **shall be removed and replaced with the following:**

"The project shall meet *Core Summer Salmonid Habitat* standards in the bypass reach and canal and all fresh water *Lake* water quality standards, designated uses, and criteria listed in WAC 173-201A in Yale Lake."

4. The following new Condition 4.1.20 shall be added:

Post-Compliance Schedule: If implementing the compliance schedule does not result in compliance with water quality standards at the time the compliance period expires, the Licensee may explore other alternative approaches available in the water quality standards, including a second compliance schedule or alternative provided in WAC 173-201A-510(5)(g).

5. Condition 4.2 Instream Flows and Habitat Flows 1) the following text:

"In order to meet the Class A standards listed in WAC 173-201A-030(2)..." **shall be removed and replaced with the following:**

"In order to meet *Core Summer Salmonid Habitat* criteria for temperature and dissolved oxygen listed in WAC 173-201A-200(1)(c) and WAC 173-201A-200(1)(d), respectively..."

6. Condition 4.3.1 the following text:

"The Project shall not cause any exceedance of the TDG water quality criteria as specified in WAC 173-201A 030 (2)(c)(iii) in the bypass reach or canal, WAC 173-201A(5)(c)(iii) in Yale Lake, and 173-201A-060 (4)(a) in any waters of the Project." **shall be removed and replaced with the following:**

"The Project shall not cause any exceedance of the TDG water quality criteria specified in WAC 173-201A-200(1)(f) except those that occur under the exemption allowed by 173-201A-200(1)(f)(i)."

7. The following new Condition 4.3.6 shall be added:

If monitoring data show exceedances of the TDG water quality criteria, Ecology may require the Licensee to submit a compliance schedule for ensuring future compliance with TDG criteria as provided by WAC 173-201A-510(5).

8. Condition 4.4.1 the following text:

"The Project shall not cause any violation of the temperature water quality criteria as specified for Class 'A' waters, WAC 173-201A-030(2)(c)(iv), in Swift No. 2 Dam, the canal or the bypass reach. The Licensee shall not cause these waters to exceed 18°C. If the presence or operation of the Project causes violation of these criteria, the Licensee shall modify its operation to the extent necessary to ensure that the Project does not cause such exceedance." shall be removed and replaced with the following:

"The Project shall not cause any violation of *Core Summer Salmonid Habitat* criteria for temperature and dissolved oxygen in the Swift No. 2 canal or the bypass reach as required by WAC 173-201A-600(1)(a)(ii). The Licensee shall not cause these waters to exceed 16°C 7-DADMax as listed in WAC 173-201A-200(1)(c) nor dissolved oxygen concentrations to go below 9.5 mg/L as listed WAC 173-201A-200(1)(d). If the presence or operation of the Swift No. 2 Project causes violation of these criteria, the Licensee shall modify its operation to the extent necessary to ensure that the project does not cause such exceedance."

9. Condition 4.4.3 "Swift No. 2 tailrace/Yale Lake the following text:

"The Project shall not cause any violation of the temperature water quality criteria as specified for Lake Class waters in WAC 173-201A-030(5) in Yale Lake. If the presence or operation of the Project causes violation of these criteria, Swift No. 2 shall modify its operation to the extent necessary to ensure that the Project does not cause such exceedance. The Lake Class temperature criterion that applies to Yale Lake mandates no measurable change from natural conditions." shall be removed and replaced with the following:

"The Project shall not cause any violation of the fresh water *Lake* designated criteria for temperature, listed in WAC 173-201A-200(1)(c)(v). The *Lake* water quality criteria that apply to Yale Lake mandate that human actions considered cumulatively may not increase the 7-day average daily maximum (7-DADMax) temperature more than 0.3°C above natural conditions. If the presence or operation of the Swift No. 2 Project causes violation of these criteria, the Licensee shall modify its operation to the extent necessary following the compliance schedule outlined in compliance schedule for dams (WAC 173-201A-510(5))."

10. Condition 4.5.2(b) In-Water-Work Protection Plan (IWWPP) the following text:

"(as defined in WAC 173 201A-110(3)(a-d))" shall be removed and replaced with the following:

"(as defined in WAC 173-201A-200 (1) (d) (e) and 201A-400 Mixing Zones)"

11. Condition 4.5.4 Maintain Turbidity Standards the following text:

- "a) Certification of this Project does not authorize the Licensee to exceed the turbidity standard beyond the mixing zone described in (b), (c), and (d) below. Turbidity in the Class A waters of the bypass reach and canal shall not exceed 5 NTU over background turbidity when turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than fifty (50 NTU). Turbidity in the Lake Class waters of Yale Lake shall not exceed 5 NTU over background turbidity.*
- b) For Class A waters, a mixing zone is established within which the turbidity standard is waived consistent with WAC 173-201A-100(7) and -110(3). The mixing zone is established to allow only temporary exceedances of the turbidity criteria during and immediately after in-water work. The temporary turbidity mixing zone shall be as follows:*
- i. For waters up to 10 cfs flow at the time of construction, the point of compliance shall be 100 feet downstream from activity causing the turbidity exceedance.*
 - ii. For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be 200 feet downstream from activity causing the turbidity exceedance.*
 - iii. For waters above 100 cfs flow at the time of construction, the point of compliance shall be 300 feet downstream from activity causing the turbidity exceedance.*
- c) For Lake Class waters, certification of this Project does not authorize the Licensee to exceed the turbidity standard beyond the mixing zone described in (d) and (e) below.*
- d) Step 1. Mixing zones shall not be allowed unless it can be demonstrated to the satisfaction of Ecology that:*
- i. Other siting, technological, and managerial options that would avoid the need for a lake mixing zone are not reasonably achievable;*
 - ii. Overriding considerations of the public interest will be served; and*
 - iii. All technological and managerial methods available for pollution reduction and removal that are economically achievable would be implemented prior to discharge*
- e) Step 2. Mixing zones, singularly or in combination with other mixing zones, shall comply with the most restrictive combination of the following:*
- i. Not exceed ten percent of the waterbody volume;*
 - ii. Not exceed ten percent of the waterbody surface area (maximum radial extent of the plume regardless of whether it reaches the surface); and*
 - iii. Not extend beyond fifteen percent of the width of the waterbody." shall be removed and replaced with the following:*

"a. Certification of this project does not authorize the Licensee to exceed the turbidity standard beyond the mixing zone described below. The Aquatic life turbidity criteria for the use category of Core summer salmonid habitat listed in WAC 173-201A-200 (1)(e) applies to the Swift No. 2 Canal, the bypass reach, and Yale lake. In Core Summer Salmonid Habitat waters turbidity shall not exceed 5 NTU over background turbidity when turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. Fresh water use designations for the Lewis River watershed are listed in WAC 173-201A-600, 173-201A-602 and the supplemental spawning and incubation map for WRIA 27 (Ecology publication#06-10-038) (See Table Below).

Table 200 (1)(e) Aquatic Life Turbidity Criteria in Fresh Water

Water Category	NTUs
Char Spawning and Rearing	Turbidity shall not exceed: • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	Same as above.

(i) The turbidity criteria established under WAC 173-201A-200 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary area of mixing is also subject to the constraints of WAC 173-201A-400 (4) and (6) listed below:

(4) No mixing zone shall be granted unless the supporting information clearly indicates the mixing zone would not have a reasonable potential to cause a loss of sensitive or important habitat, substantially interfere with the existing or characteristic uses of the water body, result in damage to the ecosystem, or adversely affect public health as determined by the department.

(6) The size of a mixing zone and the concentrations of pollutants present shall be minimized.

A temporary area of mixing shall be as follows:

- i. For waters up to 10 cfs flow at the time of construction, the point of compliance shall be 100 feet downstream from activity causing the turbidity exceedance.
 - ii. For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be 200 feet downstream from activity causing the turbidity exceedance.
 - iii. For waters above 100 cfs flow at the time of construction, the point of compliance shall be 300 feet downstream from activity causing the turbidity exceedance.
 - iv. For projects working within or along lakes, ponds, wetlands, or other nonflowing waters, the point of compliance shall be at a radius of one hundred fifty feet from the activity causing the turbidity exceedance.
- b. Water quality exceedances beyond the temporary area of mixing listed above, that are predicted as being unavoidable during construction or maintenance of a project, will be subject to all criteria listed in WAC 173-201A-400 Mixing zones. A request for an alternative mixing zone that meets the criteria listed in WAC 173-201A-400 may be submitted to Ecology for approval as part of the project-specific In-Water Work Protection Plan required by Section 4.5 of Certification (Order No. 3676)."

12. All references to Washington Surface Water Quality Standards of Chapter 173-201A WAC shall be followed according to the dispositions now listed in the 2006 codified version of this Chapter and subsequent versions.

No other condition or requirement of this Certification (Order No. 3676) is affected by this amendment.

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to protect the public interest.

FAILURE TO COMPLY WITH THIS ORDER

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this Order:

1. File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
2. Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Rd SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Deborah Cornett
Department of Ecology
Southwest Regional Office
PO Box 47775, Olympia, WA 98504-7775
Phone (360) 407-7269

MORE INFORMATION

Pollution Control Hearings Board Website: www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental Hearings Office – Pollution Control Hearings Board:

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

Chapter 371-08 WAC – Practice And Procedure:

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>


Chapter 34.05 RCW – Administrative Procedure Act:

<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>

Laws: www.ecy.wa.gov/laws-rules/ecyrcw.html

Rules: www.ecy.wa.gov/laws-rules/ecywac.html

SIGNATURE



Robert W. Bergquist, LEED[®] AP
Southwest Region Manager
Water Quality Program

11-7-2011

Date

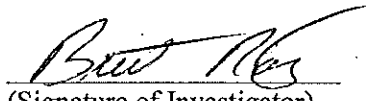
RECOMMENDATION FOR ENFORCEMENT ACTION
WATER QUALITY PROGRAM

Southwest Regional Office

Docket No. 8831, 8832, 8833, and 8834

Date: October 27, 2011

From: Brett Raunig


(Signature of Investigator)

Environmental Specialist 4

RECOMMEND ENFORCEMENT ACTION BE TAKEN:

- I. Against:
- | | |
|--------------------|-------------------------|
| PacifiCorp | Frank Shrier |
| Cowlitz County PUD | Diana Gritten-MacDonald |
- II. Location: PacifiCorp, 825 Northeast Multnomah, Portland, OR 97232
(North Fork Lewis River Dams: Merwin, Yale, and Swift No. 1)
- Location: Cowlitz County PUD, PO Box 3007 961 12th Avenue Longview, WA 98632
(North Fork Lewis River Dam: Swift No. 2)
- III. Type of Action
- A. Penalty, RCW 90.48.144
- B. Notice of Violation, RCW 90.48.120 (1)
- C. Follow-up Order, RCW 90.48.120(1)
- D. Immediate Action Order, RCW 90.48.120(2)
- E. Amendment of Action
- F. Other (specify authority) Amendment to Order 3676, 3677, 3678, and 3679. 401 Certifications for Merwin, Swift No. 1, Swift No. 2 and Yale hydropower facilities located on the Lewis River. The amendments will fix Water Quality reference errors and update Certifications to current Water Quality Standards
- IV. Nature of Violation
- 1) Unlawful Discharge of Polluting Matter into Waters of the State, RCW 90.48.080.
- 2) Violation of the Terms of a Waste Discharge Permit Issued under RCW 90.48.160, 90.48.180 or 90.48.260 through 90.48.262.

- 3) Discharging Pollutants Without a Permit Authorized under RCW 90.48.160, 90.48.180, or 90.48.260 through 90.48.262.
- 4) Violation of the Terms of a Regulatory Order or other provisions of RCW 90.48.
- 5) Agricultural Discharges, RCW 90.48.450. Has consideration been given to the effect of the action on conversion of agricultural to nonagricultural uses? _____. If yes, what attempts have been made to minimize the possibility of such conversion? (Water Quality Program Policy #1-05)
- 6) **Other: Fix errors and update existing 401 certification administrative orders to current Water Quality Standards**

V. Name of Watercourse Involved: Lewis River

VI. Narrative of Incident: These are amendments to existing 401 certification administrative orders to correct errors and to update these certifications to current Water Quality Standards

Executive Summary:

The Lewis River flows past the southern flank of Mt. St. Helens on a 90-mile path before emptying into the Columbia River near Woodland, Washington. Two volcanic peaks, Mount Adams and Mount St. Helens lie on the northern and eastern edges of the Lewis River basin. There are four hydroelectric facilities on the North Fork of the Lewis River. With a total capacity of 580 megawatts, the Projects are managed for power generation, flood control, recreation, and fish resources.

Starting upstream and going downstream, the Projects are Swift No. 1, Swift No. 2, Yale, and Merwin. These four projects are licensed separately by FERC. Merwin (FERC No. 935), Yale (FERC No. 2071), and Swift No. 1 (FERC No. 2111) are owned and operated by PacifiCorp.

Swift No. 2 (FERC NO. 2213) is owned by Cowlitz County PUD and is operated in coordination with the other projects by PacifiCorp.

As part of Project relicensing activities, PacifiCorp Energy & Cowlitz County PUD applied for and received water quality certifications pursuant to Section 401 of the federal Clean Water Act and 173-201A of the Washington Administrative Code (WAC) on October 9, 2006. The water quality certifications required an overall water quality management plan that included specific water quality monitoring plans to protect the water resources in the Lewis River project area.

During the review of this Water Quality Management Plan (WQMP) errors were found in all of these certifications. Furthermore; water quality standards have changed since these certifications were issued in 2006.

The error in the current 401 Certifications designated the Swift No. 1 tailrace, the Swift No. 2 Canal, and the Lewis River bypass reach downstream of Swift Dam as Class A aquatic life standards from the 1997 Water Quality standards. This was a misinterpretation of the standard and they should have been designated as Class AA.

In the 2006 Water Quality Standards all reservoirs in the Lewis River Project exceed the mean detention of 15 days and therefore are considered lakes. All feeder streams to lakes are designated Core Summer Salmonid Habitat (WAC 173-201A-600 (1)(a)(ii)). This Core designation includes the Swift No. 1 tailrace, the Swift No. 2 Canal, and the Lewis River bypass reach downstream of Swift Dam. Core Summer Salmonid Habitat is equivalent to Class AA water uses described in the 1997 Water Quality Standards.

EPA has confirmed the designation of these areas as "Core" in the March 2006 disapproval of Washington's 2003 Surface Water Quality Standards. EPA found that these waters are areas of juvenile emigration and that they are important for reach connectivity for adfluvial populations.

The following provision listed in all of the 401 certifications under section 4.1 General Requirements has been used several times to fix errors agreed to by both parties and to accommodate in-water work:

Ecology reserves the right to amend this Certification-Order if it determines that the provisions hereof are no longer adequate to provide reasonable assurance of compliance with applicable water quality standards or other appropriate requirements of state law. Any such amended Certification-Order shall take effect immediately upon issuance, unless otherwise provided in the amended Certification-Order, and may be appealed to the Pollution Control Hearings Board (PCHB) under Ch. 43.21B RCW.

Furthermore; all four certifications require Ecology to issue the amendment in section 4.1 General Requirements:

- 2) *In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48), or changes in or amendments to the Clean Water Act, such provisions, standards, criteria, or requirements shall apply to this project and any attendant agreements, orders or permits. Ecology will notify the Licensee through an Administrative Order of any such changes or amendments applicable to its project.*

These amendments will correct errors and will update the certifications to current water quality standards and are necessary to finish the review and to approve this WQMP. It is also important that the errors be corrected to ensure consistency among these four FERC regulated hydropower projects. Both the operational coordination of the facilities and water quality will be addressed by these changes.

VIII. Evidence Obtained: **Not applicable**

- Samples, Lab. Report No.
- Pictures
- Video Tape
- Witness Statements
- Documents
- Maps
- Other: _____

IX. Penalty Calculation (fill out only if recommending a penalty, or if needed to adjust a penalty amount in response to an Application for Relief From Penalty)

TABLE 1
Gravity Criteria (see attached definitions)

	NO (0)	POSSIBLY (1)	PROBABLY (2)	DEFINITELY (3)
1. Public Health Risk?	___	___	___	___
2. Environmental Damage?	___	___	___	___
3. Willful or Knowing Violation?	___	___	___	___
4. Unresponsive in Correcting Violation?	___	___	___	___
5. Improper Operation or Maintenance?	___	___	___	___
6. Failure to Obtain Necessary Permits	___	___	___	___
7. Economic Benefit from Noncompliance?	___	___	___	___
Total Rating Points	_____			

See Addendum for guidance

TABLE 2
Gravity Component Penalty

Rating	1-2	3-4	5-8	9-11	12-14	15
Penalty	\$500	\$1000	\$2000	\$3000	\$4000	\$5000
Rating	16	17	18	19	20	
Penalty	\$6000	\$7000	\$8000	\$9000	\$10000	

For each violation multiply the penalty amount by the duration of violation, e.g., number of days, weeks, months, etc.

If the facility has a history of documented violations and previous penalties, apply a multiple of 3 to the previous penalty (remember the maximum penalty for a violation is \$10,000.00 per day regardless of any previous violations).

TABLE 3
Economic Benefit Penalty

ENDORSEMENTS

The actions discussed are recommended to resolve the issues of the outdated and incorrect previous 401 certification administrative orders: To issue these amendments to correct the 401 certification administrative orders previously issued.

Deborah Cornett *for Robert W. Bergquist*
Watershed Resources Unit Supervisor Date 11-7-11

Concurrence with recommended action:

Robert W. Bergquist, LEED® AP *Robert W. Bergquist*
SWRO Section Manager Date 11-7-2011

I have reviewed this recommendation for the proposed action:

Gravity Criteria Definitions

1. Did the violation result in a public health risk?
 - Answer “no” if there is no evidence to support a claim of public health risk.
 - Answer “possibly” if a public health risk can be inferred from evidence and knowledge of the effects of the violation.
 - Answer “probably” if evidence supports a claim of public health risk and there is a plausible connection between this violation and the health or effect.
 - Answer “definitely” if there is direct evidence linking public health risk or adverse effects with the violation.

2. Did the violation result in environmental damage?
 - Answer “no” if there is no evidence to support a claim of environmental damage or impairment of beneficial uses.
 - Answer “possibly” if environmental damage or impairment of beneficial uses can be inferred from evidence or knowledge of the effects of the violation.
 - Answer “probably” if there is evidence to support a claim of environmental damage or impairment of beneficial uses and there is a plausible connection between the violation and the damage/impairment.
 - Answer “definitely” if there is direct evidence linking demonstrable environmental damage or impairment of the beneficial uses with the violation.

3. Was it a willful or knowing violation?
 - Answer “no” if the violator obviously did not know that the action or inaction constituted a violation.
 - Answer “possibly” if it is likely the violator knew.
 - Answer “probably” if the violator should have known.
 - Answer “definitely” if the violator clearly knew. If the answer is “definitely,” consider consulting with the environmental crimes unit.

4. Was the responsible person unresponsive in correcting the violation?
 - Answer “no” if the violation was corrected as soon as the responsible person learned of it.
 - Answer “possibly” if the violation was corrected in a less timely and cooperative fashion.
 - Answer “probably” if the responsible person attempted to correct the problem but did not correct it.
 - Answer “definitely” if the responsible person made no attempt to correct the violation.

5. Was the violation a result of improper operation or inadequate maintenance? (i.e., BMPs, pollution prevention plans, operation and maintenance (O&M) plans)
 - Answer “no” if the violation was not the result of improper operation or inadequate maintenance.
 - Answer “possibly” if the facility has an O&M plan, PPP, SWPPP, or BMP manual that is out of date or inadequate.
 - Answer “probably” if there is no O&M plan, PPP, SWPPP, or BMPs developed for the facility.
 - Answer “definitely” if the facility has no plans or is not following its plan AND the violation was clearly the result of improper operation or maintenance.

6. Did the facility fail to obtain all of the necessary permits, certifications, and approvals to operate at the time of the violation?

- Answer "no" if the paperwork was complete and appropriate for the job or task that caused the violation.
- Answer "definitely" if the facility did not have all the required permits and approvals for the job or task that caused the violation.

7. Did anyone benefit economically from non-compliance?

- Answer "no" if it is clear that no one obtained an economic benefit.
- Answer "possibly" if someone might have benefited.
- Answer "probably" if anyone benefited, but the benefit is not quantifiable.
- Answer "definitely" if the economic benefit is quantifiable.

Revised April 2005