COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION – ORDER BY CONSENT ISSUED TO CONSOLIDATION COAL COMPANY FOR THE MINE WATER TREATMENT PLANT Registration No. 10945

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, and 1316, between the State Air Pollution Control Board and Consolidation Coal Company, regarding the Mine Water Treatment Plant for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.

2. "Consolidation Coal Company" means Consolidation Coal Company, a company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Consolidation Coal Company is a "person" within the meaning of Va. Code § 10.1 – 1300.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1 – 1185.

5. "Facility" means Consolidation Coal Company's Mine Water Treatment Plant located at State. Route 632, Garden Creek, Buchanan County, Virginia.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1 – 1309.

7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.

8. "Permit" means a NSR Permit to modify and operate a coal preparation facility with the addition of a mine water treatment plant, which was issued under the Air Pollution Control Law and the Regulations to Consolidation Coal Company, Buchanan Plant effective January 23, 2009, amended October 28, 2009.

9. "PCE" means a partial compliance evaluation by DEQ staff.

10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 chapters 10 through 80.

11. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

12. "Va. Code" means the Code of Virginia (1950), as amended.

13. "VAC" means the Virginia Administrative Code.

14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Facts and Conclusions of Law

1. Consolidation Coal Company owns and operates the Facility in Buchanan County, Virginia. The Facility is a coal preparation plant which operates a mine water treatment plant designed to desalinate mine drainage water. The Facility is subject of the Permit which allows the company to operate the mine water treatment plant.

2. On July 26, 2011, Department staff conducted a PCE at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the review and follow-up information, Department staff made the following observations:

    a) During stack testing Test Run number 1 on July 26, 2011, Consolidation Coal Company determined there were several ruptured bags in the lower portion of the baghouse which necessitated the

cessation of testing and replacement of the ruptured bags No spare bags were available at the site for immediate replacement and attempts were made to repair the ruptured bags. Test Run number 2 was conducted on July 27, 2011 and Consolidation Coal Company elected to terminate testing and reschedule testing after completion of the replacement of all bags in the baghouse.

b) Stack test results were received by the Southwest Regional Office of DEQ on August 23, 2011. The stack test report indicated the result of Test Run Number 1 was 1.23 gr/dscf and the result of Test Run Number 2 was 0.08 gr/dscf.

3. Condition No. 12 of the Permit states in part, "Emissions from the operation of the salt press, crusher, and screen as exhausted through the fabric filter baghouse shall not exceed the limits specified below: Particulate Matter 0.02 gr/dscf..."

4. 9 VAC 5-50-260 requires that, "A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility..."

5. 9 VAC 5-80-1180 requires that, "C. Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter: 1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant..."

6. Condition No. 24 of the Permit states in part, "The permittee shall take the following measures in order to minimize the duration and frequency of excess emissions, with respect to air pollution control equipment, monitoring devices and process equipment which affect such emissions:...b. Maintain an inventory of spare parts..."

7. 9 VAC 5-50-20E requires that, "...At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source..."

8. 9 VAC 5-80-1180D requires that, "...Permits issued under this article will contain, but need not be limited to, any of the following elements as necessary to

ensure that the permits are enforceable as a practical matter: 1. Emission standards.; 2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following...d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control..."

9. VA Code § 10.1-1322(A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.

10. On September 9, 2011, based on the evaluation and follow-up information, the Department issued a Notice of Violation No. 02-0911-SWRO to Consolidation Coal Company – Mine Water Treatment Plant for the violations described in paragraphs C(2) through C(8), above.

11. On August 8, 2011, Consolidation Coal Company met with DEQ staff to discuss the preliminary results of the July 26 and 27, 2011 stack test.

12. On August 9, 2011, Consolidation Coal Company submitted a written permit amendment application in anticipated response to the impending stack test report results and NOV issuance.

13. On August 26, 2011, DEQ issued a significant amendment to the permit for Consolidation Coal Company to reflect that the salt dryer, press, crusher and screen are exhausted through a common stack.

14. On October 10, 2011, Consolidation Coal Company retested for PM on the fluid bed salt dryer, salt press, salt crusher, and salt screen fabric filter baghouse exhaust stack.

15. On November 28, 2011, stack test results were submitted by Consolidation Coal Company. The stack test report indicated the average of the three run test was 0.004 gr/dscf.

16. Based on the results of the July 26, 2011 inspection, the August 8, 2011 meeting, the August 9, 2011 permit amendment application, and the August 23, 2011 submitted stack test results, the Board concludes that Consolidation Coal Company has violated Conditions 12 and 24 of the Permit, 9 VAC 5-50-20E, 9 VAC 5-50-260 and 9 VAC 5-80-1180 as described in paragraphs C(3) through C(8), above.

17. Consolidation Coal Company has submitted documentation that verifies and DEQ staff has completed review of the stack test results for the Facility on December 22, 2011(October 11, 2011 retest - submitted November 28, 2011) and verified that the violations described in paragraphs C(2) through C(8), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and –1316, the Board orders Consolidation Coal Company and Consolidation Coal Company agrees to pay a civil charge of $12,417 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Consolidation Coal Company shall include its Federal Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Consolidation Coal Company for good cause shown by Consolidation Coal Company, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order

3. For purposes of this Order and subsequent actions with respect to this Order only, Consolidation Coal Company admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Consolidation Coal Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Consolidation Coal Company declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to

any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.

6. Failure by Consolidation Coal Company to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waiver the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Consolidation Coal Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Consolidation Coal Company shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Consolidation Coal Company shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which Consolidation Coal Company intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Consolidation Coal Company. Nevertheless, Consolidation Coal Company agrees to be bound by any compliance date, which precedes the

effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after Consolidation Coal Company has completed all of the requirements of the Order.

    b. Consolidation Coal Company petitions the Director or his designee to terminate the order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or

    c. the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Consolidation Coal Company.

    Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Consolidation Coal Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Consolidation Coal Company and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Consolidation Coal Company certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Consolidation Coal Company to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Consolidation Coal Company.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Consolidation Coal Company voluntarily agrees to the issuance of this Order.

And it is ORDERED this 27th day of February, 2012

Dallas R. Sizemore

Dallas Sizemore, Regional Director
Department of Environmental Quality

Consolidation Coal Company voluntarily agrees to the issuance of this Order.

Date: 2-24-12 By: Gerald F. Ramsey Attorney-in-Fact
Gerald Ramsey, Authorized Agent,
Consolidation Coal Company

Commonwealth of Virginia

City/County of Buchanan

The foregoing document was signed and acknowledged before me this 24 day of February, 2012, by Gerald F. Ramsey who is Attorney-in-Fact of Consolidation Coal Company, on behalf of the corporation.

Bea K. Neel
Notary Public

244666
Registration No.

My commission expires:
May 31, 2012

Notary Seal:

Bea K Neel
Commonwealth of Virginia
Notary Public
Commission No. 244666
My Commission Expires 05/31/2012