



**Received**

OCT 29 2008

**DEQ-SWRO**

# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOUTHWEST REGIONAL OFFICE

L. Preston Bryant, Jr.  
Secretary of Natural Resources

355 Deadmore Street, P.O. Box 1688, Abingdon, Virginia 24212  
(276) 676-4800 Fax (276) 676-4899  
www.deq.virginia.gov

David K. Paylor  
Director

Dallas Sizemore  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT

### ISSUED TO

**Consolidation Coal Company, Buchanan Plant**  
**Registration No. 10945**

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1307 (D), 10.1 – 1309, and 10.1 – 1316, between the State Air Pollution Control Board and Consolidation Coal Company for the purpose of resolving certain violations of the Virginia Air Pollution Control Board Law and Regulations for the Control and Abatement of Air Pollution.

### 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 collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 10.1-1301.
2. “Consolidation Coal Company” means Consolidation Coal Company, Buchanan Plant, St. Rte. 632, Garden Creek / Buchanan County, Virginia.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “SWRO” means the Southwest Regional Office of the Department.
6. “Order” means this document, also known as a Consent Order.

7. "Regulations" mean the Regulations for the Control and Abatement of Air Pollution, located in the Virginia Administrative Code ("VAC"). 9 VAC 5-10-10 *et seq.*
8. "Facility" means Consolidation Coal Company, Buchanan Plant, St. Rte. 632, Garden Creek / Buchanan County, Virginia.
9. "Permit" means Consolidation Coal Company, Buchanan Plant's Title V Permit dated January 30, 2006, renewed on January 11, 2008.
10. "Virginia Air Pollution Control Law" means the laws located in the Virginia Code ("Va. Code") (1950), as amended, Va. Code § 10.1-1300 *et seq.*

### **SECTION C: Findings of Facts and Conclusions of Law**

1. Consolidation Coal Company's Buchanan Plant is a major source permitted to clean and dry coal prior to shipment by railcar or truck in Garden Creek / Buchanan County, Virginia.
2. Review of data indicated that the Facility had not performed the Visible Emission Observations ("VEOs") for the handling equipment and thermal dryer every week; and required Visible Emissions Evaluations ("VEEs") were not performed when the VEOs for the handling equipment or the thermal dryer exceeded 10% opacity as required by the Consolidation Coal Company permit.
3. On June 6, 2008, the SWRO issued a Notice of Violation (NOV No. 6-1-SWRO-2008), citing the following violations:
  - a. Failure to perform required VEOs on thermal dryer exhaust for a period of (5), weeks from August 2006 through April 2007, as required by Permit Condition III. B. 4;
  - b. Failure to perform required VEEs for a period of (14) days from July 2006 through May 2007 as required by Permit Condition III. B. 4; and
  - c. Failure to perform required equipment handling VEOs for a total of (11) weeks from May 2006 through May 2007, as required by Permit Condition IV. B.
4. On July 22, 2008, the SWRO staff conducted an air compliance inspection which indicated that the water supply pressure to the Venturi scrubber was 13.3 psi. This is below the Permit requirement of 20 psi. Subsequent review of data showed that the water pressure had been below 20 psi for the past several months. The operator had failed to document and report an excursion of the water supply pressure to the Venturi scrubber.

5. On August 13, 2008, the SWRO issued a Notice of Violation (NOV No. 8-2-SWRO-2008), citing the following violations:
  - a. Failure to properly record and monitor results in response to excursion and return operation to within indicator designated condition of the water supply pressure to the Venturi scrubber, as required by Permit Condition III. B. 9 and 10; and
  - b. Failure to notify SWRO of the need to modify existing indicator ranges to address necessary monitoring changes, as required by Permit Condition III. B. 11; and
  - c. Failure to develop, implement and maintain a Quality Improvement Plan (QIP) for the excursion of the water supply pressure to the Venturi scrubber, as required by Permit Condition III. B. 12.
6. In order to resolve these violations, Consolidation Coal Company has agreed to pay a civil charge, as required in Section D of this Order, and to submit and implement the Compliance Plan, as required in Appendix A of this Order.

**SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders Consolidation Coal Company, and Consolidation Coal Company voluntarily agrees, to perform the actions described in Appendix A of this Order.

In addition, the Board orders Consolidation Coal Company, and Consolidation Coal Company voluntarily agrees, to pay a civil charge of \$ 9,581 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" and delivered to:

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

The payment shall include Consolidation Coal Company's Federal ID number and shall identify that payment is being made as a result of this Order.

**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 the Consolidation Coal Company, or on its own motion after notice and opportunity to be heard.

2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in Consolidation Coal Company's Permit.
3. This Order addresses only those violations specifically identified herein. 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 Consolidation Coal Company as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. By entering into this Order, Consolidation Coal Company admits the jurisdictional allegations herein. Consolidation Coal Company neither admits nor denies the factual findings and conclusions of law contained herein.
5. Consolidation Coal Company consents to venue in the Circuit Court of Richmond for any civil action taken to enforce the terms of this Order.
6. Consolidation Coal Company declares it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State 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 enforce this Order.
7. 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 waive 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.
8. 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.
9. 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 act of God, war, strike, or such other occurrence. Consolidation Coal Company must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Consolidation Coal Company shall notify the Director, Southwest Regional Office of DEQ within 24 hours, and shall submit a follow-up in writing within seven 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 Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the parties intend 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.

10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Consolidation Coal Company. Notwithstanding the foregoing, Consolidation Coal Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or the 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

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

And it is ORDERED this 31st day of October, 2008

Dallas Sizemore  
Dallas Sizemore, Regional Director  
Department of Environmental Quality

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

Gerald F. Ramsey  
Gerald Ramsey, Authorized Agent  
Consolidation Coal Company

Date: 10/27/08

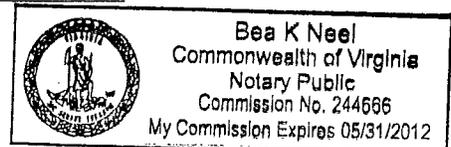
Commonwealth of Virginia

City/County of SUCHANAN

The foregoing document was signed and acknowledged before me this 27<sup>th</sup> day of October, 2008 by Gerald F. Ramsey on behalf of Consolidation Coal Company.

Bea K. Neel  
Notary Public

My commission expires: MAY 31, 2012



**APPENDIX A**

Consolidation Coal Company shall:

Within 30 days of the effective date of this Order, Consolidation Coal Company shall submit a Compliance Plan, which includes measures implemented to ensure VEEs and VEOs are performed and recorded as required, and a Quality Improvement Plan (QIP) in accordance with 40 CFR 64.8. The QIP shall include procedures for evaluating the control performance problems and, based on the results of the evaluation procedures, the permittee shall modify the plan to include procedures for conducting one or more of the following, as appropriate:

- a. Improved preventative maintenance practices;
- b. Process operation changes;
- c. Appropriate improvements to control methods;
- d. Other steps appropriate to correct control performance; and
- e. More frequent or improved monitoring.  
(9 VAC 5-80-110 E and 40 CFR 64.8(a) and (b))

Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Crystal Bazyk  
Air Compliance Manager  
Southwest Regional Office  
Virginia Department of Environmental Quality  
P.O. Box 1688  
Abingdon, Virginia 24212