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*COMMONWEALTH of VIRGINIA*

DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOUTHWEST REGIONAL OFFICE

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David K. Paylor  
Director

Jeffrey Hurst  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT**

**ISSUED TO**

**HILLS COAL COMPANY, INC.**

**FOR**

**the Hills Coal Company, Inc. Facility**

**located at 7080 Carrollton Pike, U.S. Highway 58 West, near Galax, VA**

**VPDES General Permit**

**for Stormwater Discharges Associated with Industrial Activity**

**Storm Water Registration No. VAR050090**

**Incident Report ("IR") No. 2016-S-1395**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Hills Coal Company, Inc., regarding the Hills Coal Company, Inc. Facility located at 7080 Carrollton Pike, U.S. Highway 58 West, near Galax, Virginia for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

**SECTION B: Definitions**

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 to provide Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

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. "Discharge" means the discharge of a pollutant.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Facility" or "Site" means the Hills Coal Company, Inc. property located at 7080 Carrollton Pike, U.S. Highway 58 West, near Galax, Virginia, from which discharges of stormwater associated with industrial activity occur.
8. "Hills Coal" means Hills Coal Company, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Hills Coal Company, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "IR" means Incident Report.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent", a type of Special Order under the State Water Control Law.
12. "Permit" means the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. Hills Coal Company, Inc. applied for registration under the Permit and was issued Registration No. VAR050090 on August 12, 2014.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
15. "Registration statement" means a registration statement for coverage under a storm water general permit.
16. "Regulation" means "The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*]
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.
23. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

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

1. Hills Coal owns and operates the Hills Coal Facility located at 7080 Carrollton Pike, U.S. Highway 58 West, near Galax, Virginia, which discharges stormwater associated with industrial activity.

2. The Permit allows Hills Coal to discharge stormwater associated with industrial activity from the Site to Cranberry Creek, in strict compliance with the terms and conditions of the Permit.
3. Cranberry Creek and its two unnamed tributaries are located in the New River Basin, Section 2, Class IV, special standards none. They have not been assessed, therefore are not listed in DEQ's 305(b) report as impaired.
4. On October 28, 2015, DEQ SWRO staff investigated a complaint regarding the condition of Cranberry Creek, near Galax, Virginia. DEQ staff observed that there was a very heavy sediment load in the unnamed tributary to Cranberry Creek. The unnamed tributary was charcoal black in color. Mr. Randy Triplett, on-site contact for Hills Coal, indicated that one of two buried culverts carrying the unnamed tributary under the Site, had collapsed, allowing a large amount of overburden to spill directly into the stream. According to Mr. Triplett, the collapse occurred at a point of juncture where a smaller pipe (3 feet in diameter), carrying another smaller unnamed tributary, had been connected to the larger (6 feet in diameter) culvert. It appeared that the overburden consisted of coal ash and/or coal fines and other miscellaneous fill material. Based upon dimensions of the sinkhole which developed as a result of the culvert collapse (roughly 12 foot in diameter, 15 feet deep), up to approximately 60 cubic yards of overburden could have fallen or been flushed into the tributary. Hills Coal has Permit coverage under Registration No. VAR050090 for the Site. However, the loss of material into state waters did not occur from a permitted outfall point or in compliance with final effluent permit limits. This incident was assigned IR No. 2016-S-1395.
5. The complaint, received by DEQ on October 19, 2015, was that Cranberry Creek was discolored below Hills Coal. Mr. Triplett indicated that company employees had been aware of recent minor sediment flow into [Cranberry] Creek and had placed bales of straw instream in the days leading up to October 28, 2015. However, he indicated that the collapse and large release of material only occurred that day, October 28<sup>th</sup>, after a heavy rainfall that morning. DEQ has no record of the unauthorized discharge(s) being reported to DEQ, either verbally or in writing.
6. SWRO issued a Notice of Violation for the discharge violations noted above. NOV No. W2015-11-S-0001 was issued to Hills Coal on November 20, 2015. DEQ staff then met with representatives of Hills Coal on December 15, 2015.
7. In response to the collapse of the pipe, Hills Coal initiated a pump around of the two unnamed tributaries until repair of the pipe was completed on November 2, 2015. The smaller unnamed tributary was then permanently rerouted to a new pipe, buried at a much more shallow depth at the toe of the out slope of the placed fill material. Hills Coal responded to the Notice of Violation by submittal of an engineer's report and proposal for corrective action on February 19, 2016 to address the violations. An on-site meeting was held March 28, 2016. Another engineering report, from Hills Coal's new engineer, was received by DEQ on September 7, 2016, after meeting on site on September 2, 2016.
8. A draft Consent Order was sent to Hills Coal on December 1, 2016.

9. After further discussions, an engineering plan received by DEQ from Hills Coal's engineer on February 24, 2017 proposed installation of a combination of new pipe and open channel, on new alignment, removing stream flow from any areas of fill containing coal ash and eliminating the threat of additional pipe failures in those areas. Hills Coal's engineer submitted a request for a Jurisdictional Waters Determination to the U. S. Army Corps of Engineers (COE) on March 10, 2017. An on-site pre-application meeting was held April 11, 2017.
10. The discharge monitoring reports (DMRs) for Outfalls 001 and 005 for benchmark storm water monitoring and for Outfall 001 for effluent limitations storm water monitoring for the period of July 1, 2015 to December 31, 2015, due to be submitted to DEQ's SWRO by January 10, 2016, were received January 25, 2016.
11. SWRO issued a Warning Letter for the late DMR submittal noted above. WL No. W2016-01-S-1017 was issued to Hills Coal on January 27, 2016.
12. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
13. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
14. The Permit, Part II, Section F. Unauthorized Discharges and Regulation 9 VAC 25-31-50 state that "except in compliance with this [a VPDES] permit, or another permit issued by the board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances". Va. Code § 62.1-44.5 prohibits waste discharges or other quality alterations of state waters except as authorized by permit.
15. The Permit, Part II, Section G. Reports of Unauthorized Discharges states that "any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department within five days of discovery of the discharge."
16. The Permit, Part I, Section A. requires semiannual benchmark storm water monitoring for Outfalls 001 and 005 and effluent limitations storm water monitoring for Outfall 001. The Permit, Part I, Section A.5. states that the permittee shall submit the semi-annual monitoring results required by this permit not later than January 10 and July 10.
17. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

18. The Department has issued coverage under no permits or certificates to Hills Coal, other than the VPDES General Permit for Storm Water Discharges Associated with Industrial Activity under Registration No. VAR050090, for the Site.
19. Cranberry Creek and the two unnamed tributaries of Cranberry Creek are surface waters located wholly within the Commonwealth and each is a "state water" under State Water Control Law.
20. Based on the results of the October 28, 2015 investigation, the December 15, 2015 meeting and a Facility file review, the Board concludes that Hills Coal has violated the Code, the Regulation and Part II.F, Part II.G and Part 1.A of the Permit as noted in paragraphs C.4 – C.9 of this Order.
21. On December 15, 2015, March 28, 2016, September 2, 2016 and April 11, 2017, Department staff met with representatives of Hills Coal to discuss the violations, including Hills Coal's written responses. U. S. Army Corps of Engineer representatives attended the March 28, 2016 and April 11, 2017 meetings, which were held on-site.
22. In order for Hills Coal to complete its return to compliance, DEQ staff and Hills Coal have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Hills Coal Company, Inc., and Hills Coal Company, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$9,310.00 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

Hills Coal Company, Inc. shall include its Federal Employer 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Hills Coal Company, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Hills Coal for good cause shown by Hills Coal, 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 and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2015-11-S-0001 dated November 20, 2015. This Order shall not preclude the Board or the 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, Hills Coal admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Hills Coal 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. Hills Coal declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any 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 to modify, rewrite, amend, or enforce this Order.
6. Failure by Hills Coal 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.
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. Hills Coal 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Hills Coal shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hills Coal shall notify the 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 the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any 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 above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any 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 Hills Coal. Nevertheless, Hills Coal 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 Hills Coal has completed all of the requirements of the Order;
  - b. Hills Coal 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 Hills Coal.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hills Coal 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 Hills Coal 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 Hills Coal 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 Hills Coal to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Hills Coal.

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, Hills Coal voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28<sup>th</sup> day of July, 2017.



Jeffrey L. Hurst, Regional Director  
Department of Environmental Quality

Hills Coal Company, Inc. voluntarily agrees to the issuance of this Order.

Date: May 17 2017 By: H.G. Hill, H.G. Hill  
H. G. Hill Owner  
Hills Coal Company, Inc.

Commonwealth of Virginia

City/County of Carroll

The foregoing document was signed and acknowledged before me this 17 day of

May, 2017, by H.G. Hill who is

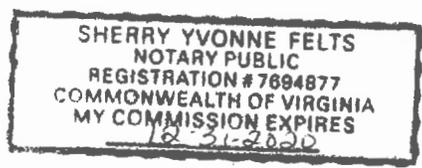
Owner of Hills Coal Company, Inc., on behalf of the corporation.

Sherry Yvonne Felts  
Notary Public

7694877  
Registration No.

My commission expires: 12-31-2020

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law, the Regulation and the Permit, Hills Coal Company, Inc. agrees to implement the following actions, as they relate to the pipe failure at the Hills Coal Company, Inc. property located at 7080 Carrollton Pike, U.S. Highway 58 West, near Galax, Virginia, by the dates noted below:

1. Submit a Joint Permit Application to the Virginia Marine Resources Commission; also submit a Stormwater Construction Permit Application to DEQ (if notified by DEQ that this type of permit is required) and an Erosion and Sediment Control Plan to DEQ and the local plan approving authority (if notified by DEQ that an erosion and sediment control plan is required) for the project no later than.....June 1, 2017
2. Begin construction within fifteen (15) days of receiving all permits\* required for the project.
3. Complete construction of both the open channel and installation of the 60-inch pipe, direct stream flow into the new pipe and channel, and permanently seal the existing, old pipe culvert in accordance with the plan sheet dated 09-08-16, which was submitted to DEQ 02-24-17 as a .pdf entitled "FINAL-DESIGN-2017-02-24" and the permit(s) obtained in Item 1, above by ....October 30, 2017
4. Notify DEQ in writing within ten days of completion of any item noted in Items 1 through 3 above.
5. Unless otherwise specified in this Order, Hills Coal Company, Inc. shall submit all requirements of Appendix A of this Order to:

Ralph T. Hilt  
Enforcement/Compliance Specialist, Sr.  
Virginia DEQ – Southwest Regional Office  
355-A Deadmore Street  
Abingdon, Virginia 24210  
phone: (276) 676-4878  
fax: (276) 676-4899  
e-mail: ralph.hilt@deq.virginia.gov

\* Upon approval, said permits and associated documents/schedules shall become an enforceable part of this Consent Order, as stated in Item 12 of Section E, Administrative Provisions, above.