

**AMENDED ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Consolidation Coal Company
ST RT 7 & US 19
P.O. Box 100
Osage, WV 26543

Date: December 29, 2004

ORDER No.: 133

RE: WV/NPDES Permit Nos.:

WV/NPDES Permit No. WV0064602 (Blacksville No. 2)
WV/NPDES Permit No. WV0093505 (Robinson Run)
WV/NPDES Permit No. WV0050598 (4 States)
WV/NPDES Permit No. WV0040711 (Loveridge)
WV/NPDES Permit No. WV0004201 (Shoemaker)
WV/NPDES Permit No. WV1011456 (Windsor)
WV/NPDES Permit No. WV0005801 (Windsor)

AMENDED ORDER

This Amended Order is issued by the Director of the Division of Water and Waste Management of the West Virginia Department of Environmental Protection (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, section 1 *et seq.*, including but not limited to, Chapter 22, Article 11, Section 6, to Consolidation Coal Company (hereinafter "Consol"). It amends and institutes revisions to Order No. 133 issued on October 26, 2004. Under this Amended Order, Consol agrees to take all actions required by the terms and conditions of this Amended Order and consents to and will not contest the Director's jurisdiction regarding this Amended Order. However, Consol 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 proceeding regarding Consol other than proceedings, administrative or civil, to enforce this Amended Order.

FINDINGS OF FACT

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

1. Consol operates various underground mines and associated water treatment facilities in West Virginia, pursuant to the above-captioned permits issued by the Director (hereinafter "the Permits").
2. Consol was the Appellant in Appeals Nos. 02-23-EQB through 02-27-EQB previously pending before the West Virginia Environmental Quality Board (hereinafter "EQB") relating to

certain Orders issued by the Director requiring, *inter alia*, compliance with interim effluent limitations, a schedule of compliance for the control of chlorides discharged to waters of the State of West Virginia, a completion date for compliance with final effluent limitations, and reporting and monitoring requirements. All of the Permits were subject to orders except WV/NPDES Permit Nos. WV1011456 and WV0005801 (Windsor).

3. The EQB Appeals were withdrawn pursuant to an Agreed Order Withdrawing Appeal(s) (hereinafter "Agreed Order") dated February 20, 2003 between the Director and Consol.

4. In compliance with the Agreed Order, Consol submitted a Final Engineering Report (hereinafter, "Final Report") entitled "Review of Chloride Compliance Alternatives at Five West Virginia Mines," on or about June 17, 2003 to the Director.

5. In the Final Report submission, various treatment and non-treatment alternatives were discussed as well as a summation of the costs associated thereto, estimating that treatment for chloride(s) at Consol's facilities (not including Windsor) would exceed 17 million dollars per year.

6. Consol desires to proceed to the EQB (or other entity designated by law), the State Legislature, and then to the United States Environmental Protection Agency, in order to attempt to obtain a "socio-economic variance" from the chloride water quality standards for the discharges covered by the Permits, pursuant to the rules promulgated pursuant to Chapter 22, Article 11.

7. Attachment B issued with Order No. 133 shall hereby be removed from the Amended Order, and compliance attained with the schedules stipulated in the Amended Order. Further, the maximum daily effluent discharge limitation for pH prescribed in Permit No. WV0005801 for Outlet 002 shall be revised to the original permit limit of 10 standard units.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1, *et seq.*, of the West Virginia Code, it is hereby agreed between the parties, and Ordered by the Director that:

1. The final effluent limitations and self-monitoring requirements for chlorides that were removed by the Agreed Order are hereby reinstated. The limitations, self monitoring requirements and discharge monitoring report forms were reflected as Attachment A issued with the Order, which shall remain in effective except for the revisions to Permit No. WV0005801 for Outlet 002 issued with the Amended Order, and attached hereto, and should be inserted into the appropriate WV/NPDES permit.

2. From the effective date of this Order until June 30, 2007 the final effluent limitations for chlorides are suspended for the following permitted outlets:

Permit No.	Outlet No.	Receiving Stream	Code
WV0093505	011	Harris Fork	WVMW-12-H
WV0093505	008	Cunningham Run	
WV0064602	003	West Virginia Fork	WVM-1-F
WV0050598	002	Unnamed Trib. Of Buffalo Creek	WVM-23-T.3
WV0050598	005	Whetstone Run	
WV0040711	001	Paw Paw Creek	WVM-22
WV0040711	007	Llewellyn Run	WVM-23-O-3-A
WV0040711	016	Unnamed Trib of South Fork	WVM-1-F-7-F
WV004201	003	Unnamed Trib of Boggs Run	0-86
WV004201	018	Unnamed Trib of Wheeling Creek	0-88
WV1011456	001	Huff Run	0-90-0
WV0005801	002	44 Hollow AMD	5030106

For all the permits and outlets referred to above, Consol agrees to comply with interim effluent limitations and self-monitoring requirements for chlorides as specified in Attachment A until June 29, 2007 or until said discharges are eliminated. The interim effluent limitations are subject to all requirements and conditions of the applicable WV/NPDES Water Pollution Control Permit.

3. For the WV/NPDES Permits and corresponding stream monitoring stations listed below, Consol agrees to continue the ongoing monitoring for chlorides on a 2/month frequency as agreed in the original Order and continuing through June 29, 2007. Consol also agrees to conduct annual biomonitoring for benthic macroinvertebrates at each station beginning in 2004 and continuing through 2007. Sample collections shall be in accordance with the protocols for sampling riffle/run habitat provided in Attachment C and restricted to the time periods of February 15 - April 15 and October 15 - December 15. Results shall be submitted within ninety (90) days from the date of sampling to the Director.

Permit No.	Upstream Monitoring Station	Downstream Monitoring Station
WV0093505	UHF-3	DHF 4

WV0093505	UCR-5	DCR-6
WV0064602	UWVF 1	DWVF 2
WV0050598	UUTBC 3	DUTBC 4
WV0050598	UWHR-1	DWHR-2
WV0040711	UPPC 5	DPPC 6
WV0040711	ULR 3	DLR 4
WV0040711	UUSF 8	DUSF 9
WV004201	UUBR1	DUBR 2
WV004201	UWC4	DWC 5
WV1011456	N/A	DUHR-1
WV0005801	UHAR-1	DHAR-2

4. Consol will submit variance applications to the EQB (or other entity designated by applicable law) by May 15, 2005 for the receiving streams associated with the applicable outlets described in Paragraph 2 above, and, for any other downstream waters for which Consol seeks relief from water quality criteria. All application submissions shall be in accordance with 46 CSR 6. In addition, Consol shall cooperate with the West Virginia Legislature and the United States Environmental Protection Agency (“USEPA”) in any action those entities deem necessary, including the submission of additional information, for their consideration of the variance requests to facilitate timely and fully consideration of Consol’s variance request. Consol will submit a complete copy of its initial variance request and supporting information to the Director within ten (10) days after submittal to EQB. Consol will also advise the Director of any additional information requests by EQB, the West Virginia Legislature, and/or the USEPA and provide copies of such additional information submitted in response to such requests within ten (10) days after submittal.

5. Should interim monitoring results indicate that one or more discharges identified herein no longer present a significant risk of violating the water quality standards for chloride, then Consol may decide not to prepare variance applications for such outlets, in which event the final

effluent limitations shall become applicable to such outlets effective May 15, 2005.

6. No later than sixty (60) days after USEPA approval of any variance, Consol shall submit appropriate NPDES modification application(s) to the Director for the appropriate WV/NPDES permits, the corresponding outlets and receiving streams. The Director shall make all appropriate modifications to the existing WV/NPDES permits as soon as reasonably practicable thereafter.

7. If the EQB, the State Legislature, and/or the USEPA, at any time, denies Consol's variance request, then Consol shall submit a proposed compliance plan within one hundred and twenty (120) days after such denial and shall comply with final effluent discharge limits and monitoring requirements within the periods specified in the final approved compliance plan. The parties acknowledge that the EQB or court entertaining jurisdiction over an appeal from any such denial may issue a stay of any such denial, which would have the effect of staying the requirements set forth herein.

8. Consol will submit a Status Report to the Director every three (3) months beginning thirty (30) days from the effective date of this Amended Order. Status reports shall detail the progress of the variance request. Each report shall contain all appropriate dates regarding public notice, hearings and the like, and, estimated completion dates for each step in the variance approval process (i.e., EQB, Legislature, and EPA estimated completion dates). Consol will also report any and all changes made by the EQB that are different than the original variance request submitted within sixty (60) days of the date the EQB made said changes.

9. If Consol fails to timely meet the following requirements in the "Order For Compliance": (a) the self-monitoring requirements, and the annual biomonitoring results in accordance with Paragraphs 1-3; ; (b) the submission of the variance request application(s), and any "additional information subsequently mandated, to the EQB and the Director as required in Paragraph 4; (c) once USEPA has approved and finalized the variance, the submission of the WV/NPDES modification application(s) the Director pursuant to Paragraph 6 and/or; (d) in the case of a

variance request denial by the EQB, the State Legislature, and/or the USEPA, the submission of a compliance plan within one hundred and twenty (120) days after such denial, and/or, compliance with effluent discharge limits and monitoring requirements within the periods specified in the final approved compliance plan in accordance with Paragraph 7; then, Consol shall pay stipulated penalties in the amount of \$1,000.00 per day per violation.

Each violation of a reporting requirement under this Order, self monitoring requirements for each specific point source or outlet, and/or any failure to timely submit application for variances, WV/NPDES permit modifications, "additional information" as required by Paragraph 7, and/or status report(s) or changes, as appropriate, shall constitute a separate violation. All payments to the Director under this Paragraph shall be made by certified or cashier's check made payable to "West Virginia Department of Environmental Protection" and shall be sent to:

c/o Director Allyn G. Turner
West Virginia Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by the Director. All requirements of the applicable permits that are not affected by this Order remain in full force and effect.

10. Consol hereby waives its right to appeal this Amended Order under the provisions of Chapter 22, Article 11, Section 21, of the Code of West Virginia.

11. The Director expressly reserves all rights and defenses which she may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority and defenses, facts other than those contained in the Findings of Fact.

Effective date:

Allyn Turner 12-29-04

Allyn Turner, Director (Date)

Division of Waste and Water Management
West Virginia Department of Environmental
Protection

Jonathan M. Pachter 1/10/05

Jonathan Pachter (Date)

Manager, Environmental Permitting
Consolidation Coal Company