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west virginia department of environmental protection

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Division of Mining and Reclamation  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
dep.wv.gov

**CONSENT ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11 and  
THE GROUNDWATER PROTECTION ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Kanawha Eagle Coal LLC  
Doug Fala, President  
P.O. Box 189  
Comfort, WV 25049

DATE: May 29, 2014

ORDER NO.: M-14-129

**INTRODUCTION**

This Consent Order is issued by the Director of the Division of Mining and Reclamation (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. to Kanawha Eagle Coal LLC (hereinafter "Kanawha Eagle").

**FINDINGS OF FACT**

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

1. Kanawha Eagle holds Surface Mine Permit No. R-752 and U-179-83 (the "Mine Permits") for its mining and mining related operations at the South Hollow Preparation Plant, combined refuse area and associated areas (collectively, the "Facility") near Winifrede, Kanawha County, West Virginia.
2. The Mine Permits are issued pursuant to the WVDEP's authority under the Surface Coal Mining and Reclamation Act and pursuant to WVDEP's role as the primary regulatory agency for surface mining in the state.

3. Kanawha Eagle holds a WV/National Pollution Discharge Permit (“NPDES”) issued by the West Virginia Department of Environmental Protection (“WVDEP”) authorizing discharges from the Facility. This WV/NPDES permit is WV0065137 (“the Permit”).
4. The Permit is issued pursuant to the WVDEP’s authority under the West Virginia Water Pollution Control Act and pursuant to authority delegated to the WVDEP by the United States Environmental Protection Agency under the federal Clean Water Act for the issuance of NPDES permits.
5. Kanawha Eagle is required to maintain a Groundwater Protection Plan (the “GPP”) in accordance with the Groundwater Protection Act, W.Va. Code, Chapter 22, Article 12 and WV 38CSR2F.
6. On February 11, 2014, a spill occurred from a valve on a coal slurry pipeline at the Facility. The amount of coal slurry released from this valve overwhelmed a series of sumps designed to contain drainage from the pipeline during maintenance activities. It then traveled across the surface, eventually entering a stream directly downstream of Outfall 004 on the Permit. As a result, Kanawha Eagle discharged coal slurry into waters of the state in violation of the Permit.
7. The coal slurry discharge caused discoloration of Fields Creek and the Kanawha River. The discoloration was not persistent and the stream was not discolored on the morning of February 12, 2014.
8. The coal slurry discharge caused deposition in the bottom of Fields Creek on February 11, 2014. Deposition remained on the bottom of Fields Creek through February 21, 2014 for a total of 11 days of impact.
9. Kanawha Eagle immediately began on-site containment measures at the Facility, including placing straw bales in Mill Branch and constructing two temporary earthen dikes at the Facility. It subsequently took steps in Fields Creek to contain and mitigate the effects of the spill on the environment, including installing twenty-one (21) temporary straw bale checks, eight (8) temporary rock checks, and utilizing up to ten vacuum trucks to capture and remove coal slurry from the stream.
10. The efforts to contain and remove the coal slurry from Fields Creek continued through February 21, 2014, at which point the deposition was no longer present and the temporary containment measures were removed. Throughout the spill response, Kanawha Eagle cooperated with WVDEP.
11. Kanawha Eagle notified WVDEP of the spill at approximately 7:42 a.m. on February 11, 2014. WVDEP personnel responded to the scene of the spill and began an investigation that morning.
12. WVDEP issued an Imminent Harm Cessation Order to Kanawha Eagle on February 11, 2014 for failing to maintain the hydrologic balance as a result of the coal slurry spill. This Cessation Order was modified to NOV #35 on February 17, 2014. WVDEP has assessed a civil penalty of \$18,802.00 for this Cessation Order and \$1,511 for this violation.

13. WVDEP issued NOV #36 to Kanawha Eagle on February 19, 2014, for failure to maintain the hydrologic balance in Fields Creek. This was due to discolored water from road sumps and other infrequently accessed areas that were being used during the spill response activities leaving the Facility and impacting Fields Creek and the Kanawha River. These discharges were caused by rapid snowmelt. WVDEP has assessed a civil penalty of \$1,300 for this violation.
14. Kanawha Eagle immediately began work to address the issues noted in NOV#36 and it was abated on March 13, 2014.
15. Based on its investigation, the WVDEP has documented Kanawha Eagle's discharge of pollutants from a coal slurry pipeline at the Facility into Fields Creek of Kanawha River. This discharge:
  - a) Violated Section C of the Permit and caused the pollution of Fields Creek.
  - b) Caused conditions not allowable in Fields Creek and the Kanawha River by discoloration on February 11 and February 19; and
  - c) Caused conditions not allowable in Fields Creek by having deposition on the stream bottom of these streams for eleven days.
16. Section 6.2.b.10 of 47CSR1 provides that a base penalty for violations of WV 22-11 may be adjusted for other factors deemed relevant by the Secretary. Due to Kanawha Eagle's efforts to respond to the spill and its cooperation with WVDEP during the investigation and response to this spill, the Secretary has determined that it is appropriate to decrease the amount of the civil penalty assessed herein to reflect civil penalties assessed under the West Virginia Surface Coal Mining and Reclamation Act as detailed in Paragraphs 12 and 13 above.
17. As part of WVDEP's investigation into the slurry spill, WVDEP reviewed the Permit, the Mine Permit, and the GPP for compliance with all applicable regulations.
18. WVDEP finds that Kanawha Eagle failed to describe new and/or existing activities in inspections of the deficiencies in the Facility's coal mining operation's groundwater protection program in that all potential contaminants on-site were not identified as prescribed in Parts III, IV and V of the GPP. Other chemicals with similar compositions were listed in the GPP; therefore, these violations were primarily administrative in nature and had a minor potential for harm to the environment or human health.
19. WV Code 22-12-10 and 38 CSR 2F provides for enforcement of violations of the Groundwater Protection Act by issuance of civil administrative penalties. A notice of civil assessment for these administrative violations has been issued by WVDEP with a penalty amount of \$3,815 (three thousand eight hundred and fifteen dollars) to be paid to the Department of Environmental Protection within thirty (30) days of entry of this Order. The penalty amount will be deposited into the Groundwater Remediation Fund. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law.

## ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code and Chapter 22, Article 12 Section 1 et seq. of the West Virginia Code it is hereby agreed between the parties, and ORDERED by the Director:

1. Kanawha Eagle shall immediately take all measures to initiate compliance with all terms and conditions of the Permit to take the following remedial actions:
2. Stop all discharge into Fields Creek which may cause conditions not allowed in West Virginia streams.
3. Continue remedial measures to remove deposited slurry material and discolored material in Fields Creek. Continue all remedial measures to clean Fields Creek until approval of the West Virginia Department of Environmental Protection is obtained to cease operations.
4. Submit modifications to the GPP, which is currently under review as part of the reissuance of the Permit, to list all chemicals now in use at the Facility.
5. Submit a modification to its GPP and/or Permit showing a plan for secondary containment for the entire slurry line from the preparation plant to discharge points (the "Transportation Plan").
6. Enhance the design of the valve system where the leak occurred and establish new procedures for ensuring proper operation of this valve during maintenance activities.
7. Install external flow meters on the coal slurry pipeline and establish procedures for responding to significant variances in flow between the two flow meters, including automatic shutdown of the slurry pumps.
8. Retrain plant personnel on spill response procedures by June 30, 2014.
9. Install cameras at strategic locations on the coal slurry pipeline, including the slurry discharge point and the valve where the leak occurred.
10. Because of Kanawha Eagle's WV/NPDES violations of the Permit and the water quality standards contained therein as described in Finding of Fact Number 15, Kanawha Eagle shall be assessed a civil administrative penalty of \$46,817 (forty-six thousand eight hundred seventeen dollars) to be paid to the Department of Environmental Protection within thirty (30) days of entry of this Order. The penalty amount will be deposited in the Mining and Reclamation Operations Fund. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law.
11. WVDEP acknowledges that the enhancements contemplated by the Transportation Plan exceed the requirements of any applicable regulation or permit. The estimated cost of such transportation plan is estimated to be in excess of \$100,000.

12. Kanawha Eagle will also withdraw its request for an informal assessment conference for the civil penalties associated with the Imminent Harm Cessation Order and NOV#35 and 36 within ten (10) days of the entry of this Consent Order.
13. **Total Payment in the amount of \$50,632 ( fifty thousand six hundred thirty-two dollars) shall be mailed to:**

**John Vernon, Assistant Director  
Division of Mining and Reclamation  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

14. The Order for Compliance of this Order satisfies any claim WVDEP has or may have for penalties under the West Virginia Water Pollution Control Act and the Groundwater Protection Act for violations of the Permit(s) which occurred through the effective date of this Order.

#### **OTHER PROVISIONS**

1. Kanawha Eagle hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Kanawha Eagle agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Kanawha Eagle 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 proceedings regarding Kanawha Eagle other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Kanawha Eagle shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Kanawha Eagle becomes aware of such a delay, notification shall be provided to the Assistant Director and shall, within ten (10) working days of initial notifications, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Kanawha Eagle intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Kanawha Eagle (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension

of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Kanawha Eagle of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Kanawha Eagle to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Kanawha Eagle, its successors and assigns.
7. This Order shall terminate upon Kanawha Eagle's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



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Doug Fala, President  
Kanawha Eagle Coal, LLC

JUNE 5, 2014

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Date

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Public Notice begin:

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Date

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Public Notice end:

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Date

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Harold W. Ward, Acting Director  
Division of Mining and Reclamation

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Date