

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

SCOTT G. MANDIROLA, DIRECTOR,  
DIVISION OF WATER AND WASTE  
MANAGEMENT, AND THOMAS L. CLARKE,  
DIRECTOR, DIVISION OF MINING  
AND RECLAMATION, WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Plaintiffs,

v.

Civil Action No. 10-C-328

SOUTHERN WEST VIRGINIA RESOURCES, LLC,  
and CONSOL OF KENTUCKY, INC.,

Defendants.

CONSENT DECREE

Upon agreement to the terms herein, the parties, Scott G. Mandirola, Director of the Division of Water and Waste Management and Thomas L. Clarke, Director of the Division of Mining and Reclamation (hereinafter collectively, the "Directors") of the West Virginia Department of Environmental Protection (hereinafter "WVDEP") and Southern West Virginia Resources, LLC ("SWVR") and Consol of Kentucky, Inc., individually and as successor in interest to SWVR (SWVR and Consol of Kentucky will be collectively referred to as "Consol"), agree that it is their intent to resolve the alleged violations of the West Virginia Water Pollution Control Act, West Virginia Code §§ 22-11-1, *et seq.* ("WPCA"), alleged violations of the West Virginia Surface Coal Mining and Reclamation Act, West Virginia Code §§ 22-3-1, *et seq.* ("SCMRA") (collectively, the "Acts"), and alleged violations of the rules and regulations implementing these Acts through this Consent Decree with civil penalties and other duties imposed as expressed herein. After

consideration of public comments on this Consent Decree, as proposed, and the parties' responses thereto, the Court enters this Consent Decree.

### **I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter and the parties hereto pursuant to W. Va. Code §§ 22-11-22 and 22-3-17.
2. Venue is proper in this Circuit Court pursuant to W. Va. Code §§ 22-11-22 and 22-3-17 because Consol is located and doing business in this judicial circuit and because the violations of the Acts and the rules promulgated pursuant to the Acts that are the subject of this action occurred in this judicial circuit.

### **II. APPLICATION OF CONSENT DECREE**

3. This Consent Decree applies to and is binding upon WVDEP and Consol and its successors, as both the permittee of West Virginia Water Pollution Control/National Pollutant Discharge Elimination System (hereinafter "WV/NPDES") Permit No. WV0044172 (the "Tug Valley Preparation Plant NPDES Permit" or "NPDES Permit") and the permittee of Surface Mining Permit Nos. O-8-85, U-650-00, and U-239-00 (the "SCMRA Permits").

### **III. FINDINGS OF FACT**

4. The Directors filed a Complaint, and later an Amended Complaint, (hereinafter "Complaint") in the Circuit Court of Mingo County, West Virginia, against Consol as set forth above in the caption of this Consent Decree. The Complaint alleges that Consol violated the WPCA and the SCMRA through discharges of pollutants from its mining operations in Mingo County, West Virginia, which are covered by the Tug Valley Preparation Plant NPDES Permit. The SCMRA Permits authorize coal mining and related operations at these mines and the NPDES Permit authorizes discharges

from the mining facilities. The Complaint further alleges violations of other WV/NPDES permits and SCMRA permits held by Consol. This Consent Decree resolves only those claims applicable to the Tug Valley Preparation Plant NPDES Permit and SCMRA Permits. WVDEP and Consol are negotiating a separate proposed consent decree in an effort to resolve the alleged violations of other WV/NPDES permits and SCMRA permits named in the Complaint, as amended.

### **Statutory and Regulatory Background**

5. WVDEP issued the NPDES Permit pursuant to its authority under the WPCA and pursuant to authority delegated to the WVDEP by the United States Environmental Protection Agency ("USEPA") under the federal Clean Water Act, 33 U.S.C. § 1342, and pursuant to a Memorandum of Agreement between the WVDEP and USEPA for the issuance of WV/NPDES permits.
6. The NPDES Permit contains limits on the concentrations of certain pollutants that can be discharged in the effluent from the mining facilities.
7. Consol has reported the quality of its discharges and other information to the WVDEP through submittal of monthly Discharge Monitoring Reports (hereinafter "DMRs").
8. Consol's mining operations are also covered by the SCMRA Permits which WVDEP issued on February 11, 1985 for Permit No. O-8-85, November 3, 1980 for Permit No. U-650-00, and February 3, 1978 for Permit No. U-239-00 (hereinafter, the "Subject Mines").
9. The WVDEP issued the SCMRA Permits pursuant to its authority under the SCMRA and its status as the primary and exclusive regulator of coal mining in West Virginia. The exclusive regulatory jurisdiction under surface mining law is the result of the United States Office of Surface Mining, Reclamation and Enforcement's approval of the state's regulatory program in January 1981. WVDEP obtained its regulatory primacy by passing a law, SCMRA, which met or exceeded

the minimum national standards established by Congress and by demonstrating its capacity to enforce its law. *See* 40 C.F.R. § 948.10.

10. The rules promulgated by the WVDEP implementing SCMRA prohibit violations of effluent limitations contained in a WV/NPDES permit and prohibit violations of water quality standards caused by discharges from a mine site. *See* W. Va. Code. St. R. § 38-2-14.5.b.

**Violations of Effluent Limits**

11. Prior to the lodging of this Consent Decree, the WVDEP's review of DMRs submitted by Consol for period from October 1, 2007 through June 30, 2011, identified results reported in excess of stated effluent limits in the NPDES Permit for the following parameters at the following Outlets:

Permit/Outlet	Parameter(s)
WV0044172 – 001	Aluminum, Selenium
WV0044172 – 003	Aluminum, Selenium
WV0044172 – 004	Aluminum, Iron, Total Suspended Solids
WV0044172 – 005	Aluminum
WV0044172 – 007	pH
WV0044172 – 008	Manganese, pH, Iron, Aluminum
WV0044172 – 010	Iron, Manganese, Aluminum, Selenium, pH
WV0044172 – 014	Total Suspended Solids, Aluminum
WV0044172 – 021	Selenium

Permit/Outlet	Parameter(s)
WV0044172 – 022	Selenium
WV0044172 – 023	Selenium
WV0044172 – 402	Chloride, BOD, Ammonia Nitrogen, pH, Fecal Coliform
WV0044172 – 403	Chlorine, Fecal Coliform, BOD, Ammonia Nitrogen

WVDEP and Consol have previously entered into Consent Order No. M-09-036 covering exceedances of WV/NPDES permit limits in the NPDES Permit prior to June 11, 2009. Consent Order No. M-09-036 is incorporated by reference into this Consent Decree, and the WVDEP hereby confirms that the penalty assessed by it, and paid by Consol, pursuant to Consent Order No. M-09-036 was based upon the factors set forth in Article VI herein, and was adequate and reasonable. WVDEP has reviewed the DMRs for all of the Outlets governed by the NPDES Permit, including the DMRs from the period covered by Consent Order No. M-09-036, and the parties agree that specific corrective action and/or compliance steps are appropriate for the Outlets and parameters referenced in Paragraph 12, below. Of the exceedances identified above, exceedances of parameters other than selenium have not been of a chronic nature, and the parties agree that, as of the effective date of this Consent Decree, no compliance plan for these parameters is warranted.

#### **Selenium Effluent Limits**

12. The Tug Valley Preparation Plant NPDES Permit governs 25 permitted outlets. Each outlet has effluent limits for multiple parameters. With respect to selenium, the Tug Valley Preparation Plant NPDES Permit includes final effluent limits for selenium at Outlets 001, 003, 010, 021, 022, and

023, although, as further described in Paragraphs 15, 16, and 17 below, those final effluent limits are the subject of a compliance schedule that Consol sought to have extended and according to a prior state circuit court ruling have been stayed from going into effect.

13. During the period prior to April 5, 2010, Consol installed multiple demonstration scale biological treatment systems at various outlets governed by the selenium compliance schedule. These treatment systems showed promise in reducing selenium levels, but were not ready for full-scale implementation by April 6, 2010. While further developing its own biological treatment system, Consol has continued to evaluate other treatment options, including a zero-valent iron system developed by Liberty Hydrologic, a proprietary system installed by Veres Quality Water and two versions of a GE ABMet system.

14. Despite Consol's efforts to come into full compliance with its selenium effluent limits by April 6, 2010, Consol could not do so.

15. In December 2009, Consol filed an application to modify the NPDES Permit to extend the final effective date and monitoring-only requirements for the selenium effluent limits beyond April 6, 2010.

16. In February 2010, the WVDEP issued a draft permit modification based on Consol's application and commenced a public comment period on the proposed modification.

17. Consol filed an action in the Circuit Court of Kanawha County requesting injunctive relief and specifically asking that Court to enter an order preventing the final limits for selenium from going into effect, thereby preserving its right to pursue the requested modification and to pursue an appeal based on the agency's action on the application. The Court granted this injunction and it remains in effect (as amended).

18. WVDEP denied Consol's application to extend the final effective date and monitoring-only requirements for the selenium effluent limits beyond April 5, 2010 by order dated August 24, 2010.

19. By a Memorandum Opinion and Order dated March 31, 2011, in *Ohio Valley Environmental Coalition, Inc, et al., v. Coal Mac, Inc. et al.*, 775 F. Supp. 2d 900 (S.D. W.Va. 2011), the District Court for the Southern District of West Virginia held that stays issued to similarly situated permittees by the Circuit Court of Kanawha County were invalid. Because Consol was not a party to that case, the District Court's decision does not invalidate the stay issued to Consol, and Consol believes that the stay issued by the Circuit Court of Kanawha County was properly issued. Notwithstanding the existence of the stay, however, and for purposes of this consent decree only and without an admission of liability by Consol, the parties agree that any reported concentration of selenium above the final effluent limits for selenium stated in the Tug Valley Preparation Plant NPDES Permit shall be considered an exceedance of the final limits subject to penalty assessment.

20. In addition to evaluating water treatment options, Consol has taken steps to reduce or eliminate the discharge from Outlets 001, 003, 021, 022, and 023 by collecting, recycling, and reusing the water in the coal cleaning plant and other operations. Also, Consol removed a coal stockpile located above Outlet 010 and selenium concentrations have since been below the effluent limits. Consol has not reported an exceedance of the selenium effluent limits at Outlets 001, 003, 021, 022, or 023 since April 2011.

21. Consol is also evaluating water treatment options and potential ways to collect, recycle, and reuse water discharging from Outlets 004, 005, 008, 018, and 019, which currently have report-only requirements for selenium. Consol will implement water management steps to reduce or eliminate the selenium discharges from these Outlets as soon as possible.

#### IV. EFFECT OF SETTLEMENT

22. The parties recognize the time, resources, expense and complexity associated with litigating the multiple claims asserted by the WVDEP, and as to which Consol has asserted multiple defenses, and further agree that the environmental benefit of an expeditious settlement of this civil action is in the best interest of the parties. As noted in Paragraph 26 below, WVDEP is releasing all of its rights to assert a claim in the future related to any claims asserted in the Complaint for the NPDES Permit and the SCMRA Permits for the period of October 1, 2007 through June 30, 2011, and claims based on other exceedances that may occur after entry and through termination of this Consent Decree. The civil penalty assessed by the Court in this Consent Decree reflects WVDEP's belief that it could prove violations of effluent limits and other allegations raised in the Complaint as well as Consol's belief that the defenses raised in response to those allegations would have eliminated or mitigated any penalty assessment.

Should Consol develop a pattern of non-compliance during the term of this Consent Decree for parameters other than those listed in paragraph 11 above, this Consent Decree shall not preclude DEP from taking further enforcement action against Consol to compel implementation of a compliance plan to address such parameters.

23. For the purposes of this Consent Decree, Consol agrees the Complaint states claims upon which relief can be granted.

24. The parties agree that the civil penalties to be paid by Consol pursuant hereto satisfy all claims that may be asserted for civil penalties under the Acts for the discharge of any pollutant regulated by the NPDES Permit from October 1, 2007 through June 30, 2011, and any potential claims that may

be asserted for penalties under the Acts for failing to timely seek a modification of the NPDES Permit before implementing water management activities.

25. The WVDEP has evaluated the DMRs for all permitted outlets, agency records regarding the NPDES Permit, and other related information and has completed an evaluation of Consol's compliance record. In completing this evaluation, the WVDEP has considered whether other reported results for any other parameter which may have had a "report only" requirement were in fact violations of the NPDES Permit or any applicable statutory or regulatory requirement. WVDEP exercised its enforcement discretion in determining that no such exceedances or violations that rise to the level of an enforcement action have occurred here.

26. This Consent Decree shall act as a bar, full accord and satisfaction and have the effect of *res judicata* for any claim or cause of action brought or that may have been brought by the WVDEP, including injunctive relief, for violations of the NPDES Permit and the associated violations of the SCMRA Permits, or violations of water quality standards, during the period from October 1, 2007 through June 30, 2011 pursuant to 33 U.S.C. § 1365(a)(1)(A) and 30 U.S.C § 1270.

27. Upon entry of this Decree, Consol will promptly seek to dismiss, with prejudice, the Circuit Court of Kanawha County action, to dissolve the injunction currently in place, and to take any other actions reasonably necessary to obtain dismissal of that action.

#### V. ORDER FOR COMPLIANCE

28. Now, therefore, in accordance with Chapter 22, Article 11, Section 1, *et seq.*, and Chapter 22, Article 3, Section 1, *et seq.*, of the West Virginia Code, it is hereby agreed between the parties and ORDERED by the Court that Consol shall (i) immediately take measures to comply with all effluent

limits in the NPDES Permit, and (ii) engage in a corrective action plan to address selenium-related compliance at the operations governed by the NPDES Permit as follows:

- a. Consol shall continue to implement its demonstration scale treatment system at the operations governed by the NPDES Permit as described in and consistent with the time frames set forth in the schedule attached as Exhibit A.
- b. This demonstration scale project is intended to determine the effectiveness of these treatment systems and evaluate the potential for full scale versions of this system to be installed at relevant outlets if necessary. It will be designed in such a manner as to provide meaningful data related to the effectiveness of the treatment method in treating the total design flow of water that would have to be treated by a full scale selenium treatment system. The final selenium treatment system will be designed, at a minimum, to treat a one-year, twenty-four hour storm flow event to meet selenium limits.
- c. Consol shall conclude the demonstration scale project described in subparagraphs (a) and (b) above, and shall evaluate the effectiveness of the demonstration scale project and provide a report on the same to WVDEP by the date specified in Exhibit A. This report may be combined with the regular quarterly report required under Paragraph 35. Nothing in this paragraph shall prevent Consol from continuing to operate the demonstration scale treatment system after the deadline for evaluation of its effectiveness. If Consol does so, it shall continue to report the effectiveness of that system to WVDEP.

d. Concurrent with its efforts to identify a viable treatment system, Consol will continue to implement water management activities to eliminate or reduce selenium concentrations in the discharges from the relevant outlets either with or without additional treatment facilities.

e. By the date shown in Exhibit A, and after consultation with WVDEP, Consol shall design and designate the full-scale treatment systems or water management systems, if any, it will install to treat selenium discharges from outlets identified in the NPDES Permit in order to assure continued compliance with the effective limits currently set forth in those permits.

f. Within 90 days of entry of this Consent Decree, Consol will submit an appropriate application to modify the NPDES Permit to address the water management activities referenced above.

29. Based on recent selenium sample results, water management and other actions taken at the operations governed by the NPDES Permit described above appear to have achieved compliance with selenium effluent limits. In the event Consol fails to maintain compliance, Consol will promptly take appropriate action to achieve compliance.

## **VI. CIVIL PENALTIES**

30. In settlement of the WVDEP's claims in its Complaint relating to reported violations of the WPCA, SCMRA, and the NPDES Permit and for relief under W. Va. Code §§ 22-11-22 and 22-3-17, Consol, without admitting liability for any alleged violations or agreeing to the appropriateness of the civil penalty expressed herein except in the context of this Consent Decree, agrees for purposes of the settlement provided herein that it shall pay a total civil penalty in the amount of

\$414,500, which includes consideration by WVDEP of relevant civil penalty assessment factors, including, but not limited to deviation from requirements, potential harm to the environment, potential economic benefit from any non-compliance, and history of compliance related to the violations for which a penalty has been assessed herein. Consol shall pay this civil penalty as set forth below.

a. Consol shall pay a total cash penalty of \$414,500 by certified or cashier's check to the WVDEP for deposit in the WVDEP's Stream Restoration Fund, payable within 60 days of the entry of this Decree.

b. Payments shall be mailed to the following address:

Harold Ward, Deputy Director  
Division of Mining and Reclamation  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

## **VII. STIPULATED PENALTIES**

31. For violation of any final effective effluent limit in the NPDES Permit, Consol shall be obligated to pay the following stipulated penalties to WVDEP:

a. For violations of daily maximum limits from July 1, 2011 through August 31, 2011, Consol shall pay \$1,000 per violation.

b. For violations of daily maximum limits from September 1, 2011 through April 30, 2012, Consol shall pay \$2,000 per violation.

c. For violations of daily maximum limits from May 1, 2012 through April 30, 2013, Consol shall pay \$3,000 per violation.

d. For violations of average monthly limits from July 1, 2011 through August 31, 2011, Consol shall pay \$3,000 per violation; provided, however, that a violation of a monthly average limit as reported on a DMR shall constitute one (1) violation.

e. For violations of average monthly limits from September 1, 2011 through April 30, 2012, Consol shall pay \$4,000 per violation; provided, however, that a violation of a monthly average limit as reported on a DMR shall constitute one (1) violation.

f. For violations of average monthly limits from May 1, 2012 through April 30, 2013, Consol shall pay \$5,000 per violation; provided, however, that a violation of a monthly average limit as reported on a DMR shall constitute one (1) violation,.

32. For failure to take or complete any step outlined in the corrective action plan set forth in Paragraph 28 herein, including Exhibit A, or to submit any report as required by Paragraph 28, including Exhibit A, or Paragraph 35 herein, Consol shall be obligated to pay the following stipulated penalties to WVDEP:

a. For the 1<sup>st</sup> through 15<sup>th</sup> day of noncompliance, Consol shall pay \$500 per day per violation;

b. For the 16<sup>th</sup> through 30<sup>th</sup> day of noncompliance, Consol shall pay \$750 per day per violation;

c. For any period of noncompliance after the 30<sup>th</sup> day, Consol shall pay \$1,000 per day per violation.

33. Stipulated penalties shall be payable within thirty (30) days of receipt of a written demand from the WVDEP. Such payments shall be made by certified or cashier's check payable to the West Virginia Department of Environmental Protection and delivered to the address specified in Paragraph 30.b for deposit in the Stream Restoration Fund.

34. The schedule of stipulated penalties provided in Paragraphs 31 and 32 are effective from the entry date of this Consent Decree through April 30, 2013.

#### **VIII. REPORTS**

35. Consol shall provide WVDEP with quarterly reports on the status of its efforts to achieve compliance with applicable selenium effluent limits. These quarterly reports shall include a summary of the sampling results for selenium at each applicable Outlets governed by the NPDES Permit. The quarterly reports shall indicate what has been accomplished since the submittal of the prior quarterly report, whether Consol is on the schedule required by this Consent Decree or, if not on schedule, include an explanation of why Consol is behind schedule, how far it is behind schedule, and what measures are being taken to get back on schedule. The quarterly reports shall also describe activities undertaken pursuant to Section V ("Order for Compliance") of this Consent Decree until all remedial measures described therein are completed. Each quarterly report shall be submitted to WVDEP (with a copy sent to Mr. Wayne Wilson of the same WVDEP office) at the address listed in paragraph 30.b within fifteen (15) days following the end of the calendar quarter, beginning January 15, 2012, and every three months thereafter until this Consent Decree is terminated in accordance with Paragraph 43.

## **IX. FORCE MAJEURE**

36. If any event occurs that causes or may cause a violation of any provision of this Consent Decree by Consol, Consol shall notify the WVDEP in writing within ten (10) days of the date on which it had knowledge or should have had knowledge that the event may or will cause a violation. "Writing" may include the use of electronic mail at an e-mail address provided for the Assistant Director of the Division of Mining and Reclamation – Inspection and Enforcement. The notice shall describe the anticipated duration of the violation, the precise cause or causes of the violation, the measures taken and/or to be taken by Consol to minimize the violation, and the timetable by which those measures will be implemented. Consol will adopt all measures to avoid or minimize any such violation. Consol shall make all efforts to identify events that cause or may cause a violation of this Consent Decree.

37. If the WVDEP agrees that any violation of this Consent Decree is caused by circumstances reasonably beyond the control of Consol, Consol shall be excused as to that violation for the period of time the violation continues due to such circumstances. Consol's time for performance shall be extended for a period not exceeding the delay actually resulting from such circumstances. In the event the WVDEP does not agree, then Consol may submit the matter to this Court for resolution. The burden of proving that any delay was caused by circumstances reasonably beyond the control of Consol and the length of such delay shall rest with Consol. Failure by Consol to comply with the notice requirements in Paragraph 36 shall render this paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Consol's rights under this provision to obtain an extension of its obligations based on that incident.

38. Compliance with any requirement of this Consent Decree, by itself, shall not constitute compliance with any other requirement. Consol must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

**X. DISPUTE RESOLUTION AND RETENTION OF JURISDICTION**

39. The Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree until the Decree is terminated as set forth below. Additionally, should either party believe that the other has failed or is failing to comply with the terms of this Decree, it may petition this Court for a resolution of the issue.

**XI. PERMITS AND OTHER LAWS AND REGULATIONS**

40. This Consent Decree is not, and shall not be interpreted to be, a permit or modification of a permit under the WPCA, nor shall it relieve Consol of any other obligation imposed by the WPCA, the NPDES Permit, or any permit issued under the WPCA, except as expressly provided herein, nor shall it in any way relieve Consol of its obligation to comply with any other federal or state law or any rule or regulation in any way related to the substance of this Consent Decree; provided, however, that no permit or permit modification shall be required to implement the demonstration scale treatment systems at the Subject Mines. Any new permit or modification must be obtained in accordance with applicable federal and state laws.

**XII. PUBLIC NOTICE**

41. The parties acknowledge and agree that final approval of this Consent Decree is subject to public notice and comment as provided in 47 C.S.R. § 30-15.2.c. Consol shall be responsible for paying any and all fees or charges associated with the publication of a public notice regarding this Consent Decree. The public shall have at least thirty (30) days in which to make any comments on

this Consent Decree and the WVDEP reserves the right to withhold or withdraw its consent or propose modifications to this Consent Decree if warranted based on comments received during the period for public comments. If the WVDEP modifies this Consent Decree in response to public comments, Consol may either consent to, or withhold consent to, entry of the modified Consent Decree. If the WVDEP makes no changes in response to public comments, Consol consents to entry of this Consent Decree without further notice. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is not binding on and is of no effect on the parties.

### **XIII. EFFECTIVE DATE**

42. The effective date of this Consent Decree shall be the date upon which it is entered by the Court as a final judgment and order.

### **XIV. TERMINATION**

43. Termination of this Consent Decree shall be by order of the Court upon application by either party, provided that all of the following conditions have been met: (1) Consol has achieved complete compliance with all requirements of this Consent Decree; (2) Consol has paid all civil and stipulated penalties required herein; and (3) all motions and other proceedings concerning this Consent Decree have been completed and are no longer subject to further judicial review and all relief resulting from such motions or other proceedings has been fully satisfied. Provided, however, that should Consol show that it is in consistent compliance with applicable selenium effluent limits at the relevant outlets governed by the NPDES Permit, and conditions (2) and (3) of this paragraph have been satisfied, then the parties shall jointly move the Court for an order terminating this Consent Decree. For purposes of this paragraph, "consistent compliance" shall mean: (a) at least six

consecutive DMR samples during a single calendar quarter that do not exceed the applicable daily maximum selenium limit stated in the permit; and (b) at least three consecutive months during a single calendar quarter, including the six-week period in described in the preceding sentence, where the average of the DMR sample results does not exceed the applicable monthly average selenium limit stated in the permit.

**XV. SIGNATORIES AUTHORIZED**

48. Each of the signatories to this Consent Decree certifies that she or he is fully authorized to enter into the terms and conditions of this Consent Decree and to bind legally the party to the Consent Decree so represented by her or him.

It is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Michael Thornsby, Chief Judge

We hereby consent to the entry of this Decree:

\_\_\_\_\_  
Scott G. Mandirola, Director  
Division of Water and Waste Management  
West Virginia Department of Environmental Protection

\_\_\_\_\_  
Date

\_\_\_\_\_  
Thomas L. Clarke, Director  
Division of Mining and Reclamation  
West Virginia Department of Environmental Protection

\_\_\_\_\_  
Date

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Jonathan C. Frame (WVSB #10182)  
Office of Legal Services  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
(304) 926-0499 x. 1702  
*Counsel for Plaintiff*

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Date

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Christopher B. Power, Esq. (W. Va. Bar No. 4286)  
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304.357.0900  
Telefax: 304.357.0919

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Date

*Counsel for Defendant Southern West Virginia Resources, LLC and Consol of Kentucky, Inc., as  
successor in interest to Southern West Virginia Resources, LLC*

## EXHIBIT A

### Selenium Effluent Compliance Schedule

WV/NPDES Permit Nos. WV0044172

(Consol of Kentucky, Inc. as successor in interest to Southern West Virginia Resources, LLC)

**November 1, 2011 – December 31, 2012 –**

Operate and manage the water management and recycling systems to prevent any discharges that exceed the NPDES Permit effluent limits for selenium.

**November 1, 2011 – December 31, 2012 -**

Continue site selenium source reduction activities for Outlets with effective selenium limits and to include Outlets with monitor only requirements for selenium.

**November 1, 2011 – December 31, 2012 –**

Continue to evaluate the effectiveness of the Consol demonstration scale selenium treatment bioreactor.

**November 1, 2011 – November 1, 2012 –**

Conduct a water balance analysis regarding the sustainability of the site water management and water recycling system for both the Outlets with effective selenium limits and the Outlets with monitor only requirements for selenium.

**November 1, 2012 –** Submit a report to WVDEP on the sustainability of the water management and recycling system to maintain compliance with selenium effluent limits (Sustainability Report).

**November 1, 2012 –** Submit a long term selenium management/treatment plan and schedule to WVDEP (Long Term Plan). The Long Term Plan shall include a schedule, consistent with the conclusions of the Sustainability Report, for construction of treatment systems if determined to be necessary to assure compliance with selenium effluent limits at both the Outlets with effective selenium limits and the Outlets with monitor only requirements for selenium.

**On or Before November 30, 2012 –** Meet with WVDEP on the Sustainability Report and the Long Term Plan.

**January 15, 2012 – January 15, 2013 –** Submit quarterly status reports on compliance with the terms of this Consent Decree to WVDEP.