

PUBLIC NOTICE

The West Virginia Department of Environmental Protection (WVDEP) and Island Creek Coal Company have proposed a settlement of an Administrative Consent Order which resolves violation(s) of the West Virginia Water Pollution Control Act. In accordance with the proposed Consent Order, Island Creek Coal Company has agreed to pay administrative penalties and to comply with the Act. Final settlement is subject to comments received during the thirty (30) day period ending July 8, 2021. Comments regarding this Administrative Order may be submitted to: John Vernon, Assistant Deputy Director; West Virginia Department of Environmental Protection, Division of Mining and Reclamation, Inspection & Enforcement; 601 57th Street SE; Charleston, WV 25304; (304) 926-0499. Comments may also be submitted electronically to: DEP.Comments@wv.gov. The proposed settlement may be viewed at the following address: <http://www.dep.wv.gov/pio/Pages/Settlements,Ordersouttopublicnotice.aspx>.



west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street
Charleston, WV 25304
Phone: 304-926-0440/Fax: 304-926-0456

Harold Ward, Cabinet Secretary
dep.wv.gov

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

TO: Island Creek Coal Company
1000 Consol Energy Drive
Canonsburg, PA 15317

DATE: April 12, 2021

ORDER NO.: M-20-311

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. to Island Creek Coal Company (hereinafter "Island").

FINDINGS OF FACT

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

1. Island holds West Virginia National Pollution Discharge Permits ("NPDES") issued by the West Virginia Department of Environmental Protection ("WVDEP") for its mining and mining-related operations in West Virginia. Among those WVDEP NPDES Permits are WV0005541 and WV0005606 ("Permits").
2. The WVDEP NPDES Permits are issued pursuant to the WVDEP's authority under the West Virginia Water Pollution Control Act pursuant to authority delegated to the WVDEP by the United States Environmental Protection Agency under the Federal Clean Water Act for the issuance of WVDEP NPDES Permits.
3. Island has reported the quality of its discharges and other information to the WVDEP, pursuant to the terms and conditions of the WVDEP NPDES Permits. This reporting has occurred through electronic filing of Discharge Monitoring Reports ("DMRs") as prescribed by the Division of Mining and Reclamation ("the Division").

Promoting a healthy environment.

4. The Division has developed and maintains a database which compiles the information submitted in DMRs by holders of WVDEP NPDES Permits issued for mining and mining-related operations, including the information submitted by Island for the Permits ("the Database"). The Database has been used by the WVDEP to track compliance with WVDEP NPDES Permits for coal mining activities.
5. The WVDEP has evaluated agency records beginning with October 2016 through December 2020 regarding Island Permit(s), DMRs, and other related information, including information submitted by the Island at the request of WVDEP, and has completed an evaluation of Island DMRs compliance.
6. Based on its evaluation, the WVDEP has documented violations of the permitted effluent limits for the WVDEP NPDES Permits. The results of this investigation are included in Attachment 2 which lists the WVDEP NPDES Permits that have violations.
7. Based on its evaluation, the WVDEP has the following Single Event Violations which have since been terminated due to completing remedial measures:
 - a. NPDES Permit No. WV0005606; Single Event Violation #1 on 2/26/19.
 - b. NPDES Permit No. WV0005606; Single Event Violation #2 on 9/05/19.
 - c. NPDES Permit No. WV0005541; Single Event Violation #2 on 3/26/19.

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:

1. Island Creek shall comply with the Compliance Schedule and reporting requirements contained in Attachment 1.
2. Because of Island's WVDEP NPDES violations of the Permit(s), Island shall be assessed a Civil Administrative Penalty of \$19,570 (nineteen thousand five hundred and seventy dollars) to be paid to the Department of Environmental Protection within thirty (30) days of demand for penalty from WVDEP. 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.
3. **Total Payment in the amount of \$19,570 (nineteen thousand five hundred and seventy dollars) shall be mailed to:**

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

4. 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 for violations of the

effluent limits for outlets which occurred October 2016 through December 2020 in relation to the specified Permits.

5. Stipulated Penalties

- a. Beginning with the effective date of this Order, Island shall be liable for stipulated penalties for violations of items 2 and 3 of the Order for Compliance of this Order. These stipulated penalties shall be effective until termination of this Order. These stipulated penalties accrue as follows:
 - i. The first through the 15th day of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$1,000 per day per violation.
 - ii. The 16th through 30th days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$2,000 per day per violation.
 - iii. The 31st day and all additional days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$3,000 per day per violation.

OTHER PROVISIONS

1. Island 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, Island 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, Island 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 Island 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, Island 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 Island becomes aware of such a delay, notification shall be provided to the Enforcement Coordinator 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 Island 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 Island (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 Island 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 Island to additional penalties and injunctive relief in accordance with the applicable law.
- 5. This Order will terminate upon receipt of payment of Civil Administrative Penalty given that Island Creek as taken measure to remediate violations noted in the 'Order for Compliance' of this Order. These violations have been terminated prior to execution of this Order.
- 6. 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.
- 7. This Order is binding on Island, its successors and assigns.
- 8. The effective date of this Order shall be the date it is signed by Island Creek.
- 9. The final entry date of this Order shall be the date it is executed by WVDEP.

/s/ Martha A. Wiegand, Vice President

Company Representative, Representative Title
Island Creek Coal Company

5/18/2021

Date

Public Notice begin: _____

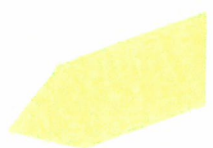
Date

Public Notice end: _____

Date

Jonathan Rorrer, Acting Director
Division of Mining and Reclamation
Deputy Secretary
Department of Environmental Protection

Date



Attachment 1

The Permittee shall achieve compliance with the requirements of the Order in accordance with the following schedule:

a. Submit Payment of Civil Administrative Base Penalty	Pursuant to Sections 2 and 3 of the 'Order for Compliance' of this Order
b. Continue to monitor all applicable permits/outlets/parameters per approved permit and submit per NPDES permit conditions	Monthly per Discharge Monitoring Report requirements

ATTACHMENT 2

Owned	NPDES Permit	Outlet	WVSCMRA and Other Permits	Sample Date	Parameter	Reported			Limit			Inspector	County	Degree of non-compliance	
						Min	Average	Max	Min	Average	Max			% Exceedance	Min.
3/29/1982	WV0005606	002		2/28/2018	01105 - Aluminum, Total (as Al)	0.504	0.6094	0.785	0.43	0.75	0.75	Jessica A. Barczuk	Grant	4.67%	X
	WV0005606	002		2/28/2018	01105 - Aluminum, Total (as Al)	0.504	0.6094	0.785	0.43	0.75	0.75	Jessica A. Barczuk	Grant	41.72%	X

Degree of Non-Compliance		
Min.	Mod.	Max.
1	1	0

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Island Creek Coal Company

WVNPDES No.:

WV0005606, WV0005541

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#												
			No T	No T	No T	T	T	T	T AI	T AI	T AI	T I	T I	T I	
a)	Amount of Pollutant Released	1 to 3	1	1	2	1	1	2	1	1	2	1	1	2	
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	3	3	3	1	1	1	
c)	Sensitivity of the Environment	0 to 3	1	1	1	3	3	3	3	3	3	2	2	2	
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1	
Average Potential for Harm Factor			1	1	1.2	1.4	1.4	1.6	1.8	1.8	2	1.2	1.2	1.4	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	2	3	1	2	3	1	2	3	1	2	3	

Potential for Harm Factors:

1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)

1)d - Length of Time of Violation

1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:**Note:** Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.**Minor** = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.**Moderate** = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly, >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.**Major** = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

1)	Potential for Harm Factor	Factor Range	FOF#											
			TIAL	TIAL	TIAL			No T 7 (a)	No T 7 (b)	No T 7 (c)				
a)	Amount of Pollutant Released	1 to 3	1	1	2			2	2	2				
b)	Toxicity of Pollutant	0 to 3	3	3	3			2	2	2				
c)	Sensitivity of the Environment	0 to 3	2	2	2			2	2	1				
d)	Length of Time	1 to 3	1	1	1			1	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1			2	2	2				
Average Potential for Harm Factor			1.6	1.6	1.8	No	No	1.8	1.8	1.6	No	No	No	No
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	1	2	3			2	2	1				

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
No T	Minor	Minor	\$1,000	1	\$1,000
No T	Minor	Moderate	\$1,500	1	\$1,500
No T	Moderate	Major	\$4,200		\$0
T	Moderate	Minor	\$2,400		\$0
T	Moderate	Moderate	\$3,400		\$0
T	Moderate	Major	\$4,600		\$0
T AI	Moderate	Minor	\$2,800		\$0
T AI	Moderate	Moderate	\$3,800		\$0
T AI	Moderate	Major	\$5,000		\$0
T I	Moderate	Minor	\$2,200		\$0
T I	Moderate	Moderate	\$3,200		\$0
T I	Moderate	Major	\$4,400		\$0
0	FALSE	FALSE	FALSE		\$0
TIAL	Moderate	Minor	\$2,600		\$0
TIAL	Moderate	Moderate	\$3,600		\$0
TIAL	Moderate	Major	\$4,800		\$0
0	FALSE	FALSE	FALSE	1	\$0
FTS	Major	Major	\$10,000		\$0
No T 7 (a)	Moderate	Moderate	\$3,800	1	\$3,800
No T 7 (b)	Moderate	Moderate	\$3,800	1	\$3,800
No T 7 (c)	Moderate	Minor	\$2,600	1	\$2,600
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$12,700

Penalty Adjustment Factors
(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

- 6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase
- 6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum
- 6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)
- 6.2.b.7 - Public Interest (increase to be determined)
- 6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)
- 6.2.b.9 - Staff investigative costs (increase to be determined)
- 6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

- Public Notice Costs (cost for newspaper advertisement)
- 6.2.b.2 - Good Faith - 10% decrease to 10% increase
- 6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease
- 6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	20		\$2,540
6.2.b.4 - Compliance/noncompliance history -	10		\$1,270
6.2.b.6 - Economic benefits - (flat monetary increase)	\$3,000		\$3,000
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$60		\$60
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$6,870
Penalty =			\$19,570

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	\$3,000
Estimated Economic Benefit	\$3,000
Comments:	Competitive advantage: Effluent and single event violations @ \$1,000/quarter x 3 quarters = \$3,000