

## **PUBLIC NOTICE**

The West Virginia Department of Environmental Protection (WVDEP) and Lexington Coal Company, LLC 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, Lexington Coal Company, LLC 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 May 29, 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 57<sup>th</sup> Street SE; Charleston, WV 25304; (304) 926-0499. Comments may also be submitted electronically to: [DEP.Comments@wv.gov](mailto:DEP.Comments@wv.gov). The proposed settlement may be viewed at the following address: <http://www.dep.wv.gov/pio/Pages/Settlements,Ordersouttopublicnotice.aspx>.



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west virginia department of environmental protection

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Division of Mining and Reclamation  
601 57<sup>th</sup> 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: Lexington Coal Company, LLC  
P.O. Box 58370  
Charleston, WV 25358

DATE: March 2, 2021  
ORDER NO.: M-19-296

**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 Lexington Coal Company, LLC (hereinafter "LCC").

**FINDINGS OF FACT**

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

1. LCC 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 WV0038113, WV0041734, WV0095796, WV0096148, WV1002040, WV1004328, WV1016024, WV1017080, WV1020641, WV1019970, WV1018914, WV1019716, WV1020005, WV1020196 and WV1008277 ("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. LCC 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 LCC 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 April 2016 through September 2020 regarding LCC Permit(s), DMRs, and other related information, including information submitted by the LCC at the request of WVDEP, and has completed an evaluation of LCC 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 Attachments 3-A, 3-B and 3-C which list the WVDEP NPDES Permits that have violations.

**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. LCC shall immediately take all measures to initiate compliance with all terms and conditions of the Permit(s), Outlets(s) and Parameter(s) indicated in Table A below:

PERMIT	OUTLET(s)	PARAMETER
WV1018914	047	Selenium, Total Recoverable
WV0041734	011	Aluminum, Total (as Al)
WV1020641	007	Iron, Total (as Fe)
WV1020196	006, 007, 010, 011, 052	Selenium, Total Recoverable
WV1008277	017, 038	Selenium, Total Recoverable
WV1020005	006	Selenium, Total Recoverable

2. LCC shall comply with the Compliance Schedule and reporting requirements contained in Attachment 1.
3. Within 90 days of entry of this Order, LCC shall submit for the Division’s approval a proposed Corrective Action Plan (CAP) with schedule and possible applications for modification(s), outlining how and when LCC will achieve compliance with Permit(s) limits for which compliance cannot be immediately achieved. This CAP shall address the Permit(s) listed in Table A of this Order. The CAP will include costs of construction, maintenance, and operation.
4. The Division shall review the proposed CAP and promptly notify LCC of any comments it may have with the proposed CAP. The parties agree to work together to resolve any issues related by the Division with regards to the CAP. Within 30 days of receipt of the Division’s approval of the CAP, LCC shall begin the implementation of the plan in accordance with the scheduled provided therein. Upon approval, the CAP shall be considered a part of this Order.

5. During the Informal Hearing held with WVDEP and LCC representatives on September 16, 2020, LCC submitted information regarding discharges onto WV1004328 from an adjacent permit not owned by LCC (ERP WV1013271). LCC stated that this discharge onto WV1004328 contains high Selenium levels and is causing outlet 001 to be in violation of permitted effluent limits. This issue was addressed by an Administrative Order in June of 2019 to ERP. A subsequent investigation was conducted by WVDEP staff and determined that LCC WV1004328 lies geologically approximately 60 feet above ERP WV1013271. As a result of this investigation, it has been determined that while ERP WV1013271 Outlet 128 was found to be contributing seepage to LCC WV1004328 Outlet 001, WV1004328 was found to possibly be contributing Selenium to WV1013271 due to a hydrologic connection. While WV1004328 will not be subject to a CAP or stipulated penalties as a part of this Order given overall history of compliance, WVDEP will continue to monitor effluent data at this Outlet. Failure to bring WV1004328 Outlet 001 into compliance with permitted effluent limits may result in an escalation of this enforcement action.
6. Because of LCC WVDEP NPDES violations of the Permit(s), LCC shall be assessed a Civil Administrative Penalty of \$125,000 (one hundred and twenty five thousand dollars) to be paid to the Department of Environmental Protection Pursuant to the Payment Agreement in Attachment 2. 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.
7. **Total Payment in the amount of \$125,000 (one hundred and twenty five thousand dollars) shall be mailed to:**

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

8. 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 April 2016 through September 2020 in relation to the specified Permits.
9. Stipulated Penalties
  - a. Beginning with the effective date of the Draft Order, LCC shall be liable for stipulated penalties for violations of items 2, 3,4, 6 and 7 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 15<sup>th</sup> 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 16<sup>th</sup> through 30<sup>th</sup> 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.

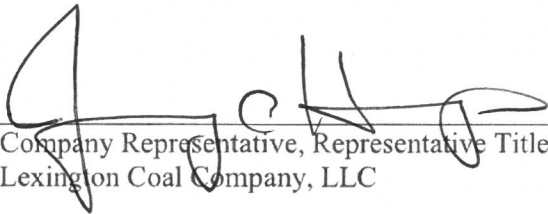


- iii. The 31<sup>st</sup> day and all additional days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$3,000 per day per violation.
- b. For the period beginning with the effective date of the Draft Order through the termination date of this Order, LCC shall be liable for stipulated penalties for non-compliances for Permit(s), Outlet(s) and Parameter(s) specified in Table A in the following amounts:
- i. \$1,000 for each violation of a daily maximum limit;
  - ii. \$3,000 for each violation of a monthly average limit;
  - iii. \$10,000 for each month for each of the Permits for which LCC fails to submit a required discharge monitoring report for one or more outlets with limits.

#### **OTHER PROVISIONS**

1. LCC 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, LCC 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, LCC 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 LCC 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, LCC 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 LCC becomes aware of such a delay, notification shall be provided to the Acting Assistant Deputy 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 LCC 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 LCC (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 LCC 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 LCC 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 LCC, its successors and assigns.
5. The Permits that are included under Table A of the Order for Compliance sections of this Order shall terminate from the Order upon the verification of WVDEP that LCC has met all requirements with the Order and is in full compliance. The Permits that are not included under Table A of the Order for Compliance sections of this Order shall terminate from the Order upon full payment of the Civil Administrative Penalty.
6. The effective date of the Draft Order shall be the date this Order is executed by LCC.
7. The effective final date of this Order shall be the date the Order is executed by the WVDEP.

  
\_\_\_\_\_  
Company Representative, Representative Title  
Lexington Coal Company, LLC

4.16.21  
\_\_\_\_\_  
Date

Public Notice begin: \_\_\_\_\_  
Date

Public Notice end: \_\_\_\_\_  
Date

\_\_\_\_\_  
Jonathan Rorrer, Acting Director  
West Virginia Department of Environmental Protection  
Division of Mining and Reclamation

\_\_\_\_\_  
Date

**Attachment 1**

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

a. Submit required Corrective Action Plan	Within 90 days of effective date of this order
b. Submit a <b>Semi-Annual</b> Status Report to the Assistant Deputy Director, Permit Inspector and Regional NPDES Supervisor for each Permit Listed in Table A of this Order	Within 60 days of submittal of Corrective Action Plan through termination of Order
c. Continue to monitor all applicable permits/outlets/parameters per approved final effluent limits and submit per NPDES permit conditions	Monthly per Discharge Monitoring Report requirements

ATTACHMENT 2

**Payment Agreement**  
**Lexington Coal Company, LLC**

I. Introduction

This payment agreement is made between the West Virginia Department of Environmental Protection (hereafter "DEP") and Lexington Coal Company, LLC (hereafter "LCC"). The purpose of this Agreement is to resolve outstanding civil penalties incurred from violations issued to LCC pursuant West Virginia Code, Chapter 22, Article 11, Section 1 et seq.

II. Background

LCC incurred civil penalties based on enforcement action M-19-296 taken by DEP against LCC. LCC requested to enter into a Payment Agreement. LCC's civil penalty assessment is determined to be \$125,000.00.

III. Payment Terms

A. This Agreement shall become effective upon the date of the DEP Director's signature. LCC agrees to pay \$25,000.00 as a down payment for all outstanding violations ten days after receiving the demand for payment letter from the DEP. Then beginning 30 days after the down payment is due, LCC agrees to pay \$10,000.00 per month for 11 consecutive months. Said payments shall be paid by Cashier's Check or other payment form acceptable to DEP and are due every month until penalty is paid is full.

B. This Agreement is executed without any admission of fact or law as to the merits of any positions either taken or assumed by the parties hereto. This Agreement shall not be admissible in any administrative or judicial proceeding other than an action for enforcement of the Agreement.

C. Failure to meet the payment schedule herein will result in penalties being declared delinquent and LCC may be subject to additional and escalating enforcement action.

ATTACHMENT 3-A

Owned	NPDES Permit	Outlet	Sample Date	Parameter	Reported		Limit		Non-Compliance	Facility Site Name	% Exceedance	Degree of Non-Compliance		
					Max	Units	Max	Units				Min	Med	Max
7/6/2018	WV0038113	001	9/30/2018	01105 - Aluminum, Total (as Al)	1.869	MG/L	75	MG/L	010 - Exceeds Concentration Maximum	Chesterfield Surface Mine	149.20%		X	
	WV0041734	011	2/28/2019	01105 - Aluminum, Total (as Al)	1.446	MG/L	1.04	MG/L	010 - Exceeds Concentration Maximum		39.04%		X	
4/20/2018	WV0041734	011	5/31/2018	01105 - Aluminum, Total (as Al)	1.31	MG/L	1.04	MG/L	010 - Exceeds Concentration Maximum	Wayne Mine Complex	25.96%		X	SEV#1
	WV0041734	013	5/31/2018	01105 - Aluminum, Total (as Al)	0.778	MG/L	75	MG/L	010 - Exceeds Concentration Maximum		3.73%		X	SEV#1
	WV0041734	013	6/30/2018	01105 - Aluminum, Total (as Al)	1	MG/L	75	MG/L	010 - Exceeds Concentration Maximum		33.33%		X	
6/18/2018	WV0095796	007	10/31/2018	00530 - Total Suspended Solids	116	MG/L	70	MG/L	010 - Exceeds Concentration Maximum	Ferrall Branch Complex, Crystal Fuels Alma Deep Mine	65.71%		X	
8/14/2018	WV0096148	006	2/28/2019	01105 - Aluminum, Total (as Al)	0.856	MG/L	75	MG/L	010 - Exceeds Concentration Maximum	Kerrill Mine No. 1 & Preparation Plant	14.13%		X	
12/21/2018	WV1002040	004	2/28/2019	01105 - Aluminum, Total (as Al)	3	MG/L	1.97	MG/L	010 - Exceeds Concentration Maximum	Mine # 15	52.28%		X	
5/29/2018	WV1008277	017	9/30/2018	00981 - Selenium, Total Recoverable	10.1	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum	Whlman No.2 Surface Mine	23.17%		X	
	WV1008277	017	12/31/2018	00981 - Selenium, Total Recoverable	10.6	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		29.27%		X	
	WV1008277	017	1/31/2019	00981 - Selenium, Total Recoverable	10.8	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		31.71%		X	
	WV1008277	017	2/28/2019	00981 - Selenium, Total Recoverable	10.2	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		24.39%		X	
	WV1008277	017	3/31/2019	00981 - Selenium, Total Recoverable	11	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		34.15%		X	
10/5/2018	WV1016024	022	2/28/2019	01105 - Aluminum, Total (as Al)	3.57	MG/L	3.46	MG/L	010 - Exceeds Concentration Maximum	Jacks Branch Buffalo Mine	3.18%		X	
4/20/2016	WV1018914	047	4/30/2018	00981 - Selenium, Total Recoverable	10.5	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum	Premium Energy No. 3 Surface Mine	28.05%		X	
	WV1018914	047	12/31/2018	00981 - Selenium, Total Recoverable	12.2	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		48.78%		X	
	WV1018914	047	1/5/2019	00981 - Selenium, Total Recoverable	14.5	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		76.83%		X	
	WV1018914	047	2/28/2019	00981 - Selenium, Total Recoverable	10.9	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		32.93%		X	
	WV1018914	087	4/30/2018	00981 - Selenium, Total Recoverable	8.8	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		7.32%		X	
	WV1018914	087	12/31/2018	00981 - Selenium, Total Recoverable	8.4	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		2.44%		X	
	WV1018914	107	12/31/2018	00981 - Selenium, Total Recoverable	8.8	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		7.32%		X	
	WV1018914	107	2/28/2019	00981 - Selenium, Total Recoverable	9.6	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		17.07%		X	
	WV1019716	004	10/31/2018	00981 - Selenium, Total Recoverable	13.8	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		68.29%		X	
	WV1019716	004	11/30/2018	00981 - Selenium, Total Recoverable	16.1	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		96.34%		X	
10/31/2018	WV1019716	004	12/31/2018	00981 - Selenium, Total Recoverable	15.5	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum	89.02%		X		
	WV1019716	004	3/31/2019	00981 - Selenium, Total Recoverable	18.9	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum	130.49%		X		
	WV1019716	005	1/5/2019	00981 - Selenium, Total Recoverable	10.9	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum	32.93%		X		
	WV1019716	005	2/28/2019	00981 - Selenium, Total Recoverable	11.4	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum	39.02%		X		
	WV1019716	005	3/31/2019	00981 - Selenium, Total Recoverable	10.6	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum	29.27%		X		
3/14/2019	WV1019970	007	3/31/2019	00981 - Selenium, Total Recoverable	17	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum	Surface Mine No. 7	107.32%		X	
10/29/2018	WV1020605	006	10/30/2018	00981 - Selenium, Total Recoverable	12.3	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		50.00%		X	SEV#1
	WV1020005	006	10/31/2018	00981 - Selenium, Total Recoverable	11.9	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		45.12%		X	
	WV1020005	006	11/30/2018	00981 - Selenium, Total Recoverable	12	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		46.34%		X	
	WV1020005	006	12/31/2018	00981 - Selenium, Total Recoverable	12	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		46.34%		X	
	WV1020005	006	1/31/2019	00981 - Selenium, Total Recoverable	13.3	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		62.20%		X	
	WV1020005	006	2/28/2019	00981 - Selenium, Total Recoverable	14.2	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		73.17%		X	
	WV1020005	006	3/14/2019	00981 - Selenium, Total Recoverable	14.3	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		74.39%		X	SEV#1 followup
	WV1020005	006	3/31/2019	00981 - Selenium, Total Recoverable	13.8	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		68.29%		X	
	WV1020196	006	1/31/2019	00981 - Selenium, Total Recoverable	9.3	UG/L	8.2	UG/L	010 - Exceeds Concentration Maximum		13.41%		X	

Owned	NPDES Permit	Outlet	WVSCMRA and Other Permits	Sample Date	Parameter	Reported		Limit		Non-Compliance	Facility Site Name	% Exceedance	Degree of Non-Compliance		
						Average	Units	Average	Units				Mn	Test	Alas
7/6/2018	WV0038113	001	S007076	8/30/2018	01105 - Aluminum, Total (as Al)	0.9725	MG/L	43	MG/L	030 - Exceeds Concentration Average	Chesterfield Surface Mine	126.16%		X	
4/20/2018	WV0041734	002	U002584	6/30/2018	01105 - Aluminum, Total (as Al)	0.478	MG/L	43	MG/L	030 - Exceeds Concentration Average	Wayne Mine Complex	11.16%	X		
	WV0041734	011	U002584	2/28/2019	01105 - Aluminum, Total (as Al)	0.5393	MG/L	.6	MG/L	030 - Exceeds Concentration Average		6.55%	X		X
	WV0041734	013	U002584	6/30/2018	01105 - Aluminum, Total (as Al)	1	MG/L	43	MG/L	030 - Exceeds Concentration Average		132.66%			
6/18/2018	WV0095796	007	O504899	6/30/2018	00530 - Total Suspended Solids	40	MG/L	35	MG/L	030 - Exceeds Concentration Average	Ferrell Branch Complex, Crystal Fuels Alma Deep Mine	14.29%	X		
	WV0095796	007	O504899	10/31/2018	00530 - Total Suspended Solids	116	MG/L	35	MG/L	030 - Exceeds Concentration Average		231.43%			X
6/14/2018	WV0096148	005	O013963	1/31/2019	01045 - Iron, Total (as Fe)	1.555	MG/L	1.42	MG/L	030 - Exceeds Concentration Average	Kermit Mine No. 1 & Preparation Plant	9.51%	X		
	WV0096148	005	O013963	2/28/2019	01045 - Iron, Total (as Fe)	1.5433	MG/L	1.42	MG/L	030 - Exceeds Concentration Average		15.73%	X		
	WV0096148	006	E001700	2/28/2019	01105 - Aluminum, Total (as Al)	0.478	MG/L	.43	MG/L	030 - Exceeds Concentration Average		11.16%	X		
12/21/2018	WV1002040	004	U300488	2/28/2019	01105 - Aluminum, Total (as Al)	3	MG/L	1.13	MG/L	030 - Exceeds Concentration Average	Mine # 15	165.49%		X	
10/5/2018	WV1016024	022		2/28/2019	01105 - Aluminum, Total (as Al)	2.3042	MG/L	1.99	MG/L	030 - Exceeds Concentration Average	Jacks Branch Buffalo Mine	15.79%	X		
6/14/2018	WV1017080	036	S502097	8/31/2018	00981 - Selenium, Total Recoverable	4.91	UG/L	4.7	UG/L	030 - Exceeds Concentration Average	Surface Mine No. 9	4.47%	X		
	WV1017080	036	S502097	10/31/2018	00981 - Selenium, Total Recoverable	5.43	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		15.53%	X		
	WV1017080	036	S502097	11/30/2018	00981 - Selenium, Total Recoverable	5.4	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		14.89%	X		
4/20/2018	WV1018914	047	S400400	4/30/2018	00981 - Selenium, Total Recoverable	9.85	UG/L	4.7	UG/L	030 - Exceeds Concentration Average	Premium Energy No. 3 Surface Mine	109.57%		X	
	WV1018914	047	S400400	12/31/2018	00981 - Selenium, Total Recoverable	12.2	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		159.57%		X	
	WV1018914	047	S400400	1/31/2019	00981 - Selenium, Total Recoverable	11.9	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		153.19%		X	
	WV1018914	047	S400400	2/28/2019	00981 - Selenium, Total Recoverable	10.9	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		131.51%		X	
	WV1018914	047	S400400	4/30/2018	00981 - Selenium, Total Recoverable	8.8	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		78.72%		X	
	WV1018914	047	S400400	12/31/2018	00981 - Selenium, Total Recoverable	8.4	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		87.23%		X	
	WV1018914	107		12/31/2018	00981 - Selenium, Total Recoverable	8.8	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		78.72%		X	
	WV1018914	107		1/31/2019	00981 - Selenium, Total Recoverable	8.6	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		87.23%		X	
10/31/2018	WV1019716	004	S503208	10/31/2018	00981 - Selenium, Total Recoverable	13.8	UG/L	4.7	UG/L	030 - Exceeds Concentration Average	Surface Mine 5A	193.62%		X	
	WV1019716	004	S503208	11/30/2018	00981 - Selenium, Total Recoverable	14.85	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		211.70%		X	
	WV1019716	004	S503208	12/31/2018	00981 - Selenium, Total Recoverable	15.5	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		225.79%		X	
	WV1019716	004	S503208	3/31/2019	00981 - Selenium, Total Recoverable	16.4	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		291.45%		X	
	WV1019716	005	S503208	12/31/2018	00981 - Selenium, Total Recoverable	5.95	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		26.60%	X		
	WV1019716	005	S503208	1/31/2019	00981 - Selenium, Total Recoverable	10.8	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		129.78%		X	
	WV1019716	005	S503208	2/28/2019	00981 - Selenium, Total Recoverable	10.7	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		127.66%		X	
	WV1019716	005	S503208	3/31/2019	00981 - Selenium, Total Recoverable	10.5	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		123.40%		X	
3/14/2019	WV1019970	007	S501609	3/31/2019	00981 - Selenium, Total Recoverable	16.85	UG/L	4.7	UG/L	030 - Exceeds Concentration Average	Surface Mine No. 7	258.51%		X	
10/29/2018	WV1020005	005	O501399	10/31/2018	01055 - Manganese, Total (as Mn)	2.51	MG/L	2	MG/L	030 - Exceeds Concentration Average	Cherry Tree Refuse Facility	25.50%	X		
	WV1020005	005	O501399	11/30/2018	01055 - Manganese, Total (as Mn)	2.89	MG/L	2	MG/L	030 - Exceeds Concentration Average		44.50%	X		X
	WV1020005	005	O501399	12/31/2018	01055 - Manganese, Total (as Mn)	2.53	MG/L	2	MG/L	030 - Exceeds Concentration Average		26.50%	X		
	WV1020005	005	O501399	1/31/2019	01055 - Manganese, Total (as Mn)	2.04	MG/L	2	MG/L	030 - Exceeds Concentration Average		2.90%	X		
	WV1020005	006	O502198	10/31/2018	00981 - Selenium, Total Recoverable	11.35	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		141.48%		X	
	WV1020005	006	O502198	11/30/2018	00981 - Selenium, Total Recoverable	11.76	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		150.00%		X	
	WV1020005	006	O502198	12/31/2018	00981 - Selenium, Total Recoverable	11.35	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		141.48%		X	
	WV1020005	006	O502198	1/31/2019	00981 - Selenium, Total Recoverable	13.15	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		179.78%		X	
	WV1020005	006	O502198	2/28/2019	00981 - Selenium, Total Recoverable	13.9	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		195.74%		X	
	WV1020005	006	O502198	3/31/2019	00981 - Selenium, Total Recoverable	13.6	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		189.36%		X	
4/20/2018	WV1020196	006	S502099	1/31/2019	00981 - Selenium, Total Recoverable	9.3	UG/L	4.7	UG/L	030 - Exceeds Concentration Average	Surface Mine No. 2	97.87%		X	
	WV1020196	007	S502099	1/31/2019	00981 - Selenium, Total Recoverable	10.6	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		125.53%		X	
	WV1020196	007	S502099	2/28/2019	00981 - Selenium, Total Recoverable	11.9	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		153.19%		X	
	WV1020196	010	S502099	4/30/2018	00981 - Selenium, Total Recoverable	27.25	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		479.78%		X	
	WV1020196	010	S502099	1/31/2019	00981 - Selenium, Total Recoverable	24.35	UG/L	4.7	UG/L	030 - Exceeds Concentration Average		418.09%		X	
11/2/2018	WV1020641	020	S502301	11/30/2018	01055 - Manganese, Total (as Mn)	2.1	MG/L	2	MG/L	030 - Exceeds Concentration Average	Locust Fork Surface Mine	5.00%	X		X
	WV1020641	020	S502301	12/31/2018	01055 - Manganese, Total (as Mn)	2.86	MG/L	2	MG/L	030 - Exceeds Concentration Average		43.00%	X		
	WV1020641	020	S502301	12/31/2018	01105 - Aluminum, Total (as Al)	0.486	MG/L	.43	MG/L	030 - Exceeds Concentration Average		13.02%	X		



4/20/2018	WV1020196	007	1/31/2019	00981 - Selenium, Total Recoverable	12.5	UG/L	8.2	UG/L	010	- Exceeds Concentration Maximum		52.44%	X
	WV1020196	007	2/28/2019	00981 - Selenium, Total Recoverable	12.1	UG/L	8.2	UG/L	010	- Exceeds Concentration Maximum	Surface Mine No. 2	47.56%	X
	WV1020196	010	4/30/2018	00981 - Selenium, Total Recoverable	28.2	UG/L	8.2	UG/L	010	- Exceeds Concentration Maximum		243.90%	X
	WV1020196	010	1/31/2019	00981 - Selenium, Total Recoverable	27.9	UG/L	8.2	UG/L	010	- Exceeds Concentration Maximum		240.24%	X
11/2/2018	WV1020641	020	12/31/2018	01105 - Aluminum, Total (as Al)	0.791	MG/L	.75	MG/L	010	- Exceeds Concentration Maximum	Locust Fork Surface Mine	5.47%	X

non pH Totals	Degree of non-compliance		
	Min	Mod	Max
	40	4	0

Totals	Degree of non-compliance		
	Min.	Mod.	Maj.
	57	35	2

non pH Totals	Degree of non-compliance		
	Min.	Med.	Maj.
	17	31	2

plus pH	0	0	0
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Totals	Degree of non-compliance		
	Min.	Med.	Maj.
	17	31	2

ATTACHMENT 3-B

Exceedances 07/1/19 to 06/30/20

responsible_party_name	assoc_permit_no	inspector_code	chemical_report_date	chem	rpt_average	rpt_maximum	lmt_average	lmt_maximum	lmt_units	noncompliance	Degree of noncompliance		
											% Exceedance	M/N	MOJ
LEXINGTON COAL COMPANY, LLC	WV0041734	002	2/29/2020	01105 - Aluminum, Total (as Al)	1.063		75		MGL	010 - Exceeds Concentration Maximum	42%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	011	2/29/2020	000530 - Total Suspended Solids	170		70		MGL	010 - Exceeds Concentration Maximum	143%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	011	2/29/2020	01105 - Aluminum, Total (as Al)	1.04		1.04		MGL	010 - Exceeds Concentration Maximum	257%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	011	4/9/2020	01105 - Aluminum, Total (as Al)	1.532		1.04		MGL	010 - Exceeds Concentration Maximum	47%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	011	5/31/2020	01105 - Aluminum, Total (as Al)	2.011		1.04		MGL	010 - Exceeds Concentration Maximum	83%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	011	12/31/2019	01105 - Aluminum, Total (as Al)	0.982		6		MGL	030 - Exceeds Concentration Average	64%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	011	2/29/2020	01105 - Aluminum, Total (as Al)	1.6347		6		MGL	030 - Exceeds Concentration Average	172%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	011	2/28/2020	000530 - Total Suspended Solids	47		35		MGL	030 - Exceeds Concentration Average	20%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	011	4/29/2020	01105 - Aluminum, Total (as Al)	0.9633		6		MGL	030 - Exceeds Concentration Average	41%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	011	5/8/2020	01105 - Aluminum, Total (as Al)	1.2015		6		MGL	030 - Exceeds Concentration Average	110%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	013	12/31/2019	01105 - Aluminum, Total (as Al)	0.621		43		MGL	030 - Exceeds Concentration Average	44%	X	
LEXINGTON COAL COMPANY, LLC	WV0041734	013	3/9/2020	01105 - Aluminum, Total (as Al)	0.4655		43		MGL	030 - Exceeds Concentration Average	8%	X	
LEXINGTON COAL COMPANY, LLC	WV0095796	009	6/30/2019	01045 - Iron, Total (as Fe)	2.57		2.46		MGL	010 - Exceeds Concentration Maximum	4%	X	
LEXINGTON COAL COMPANY, LLC	WV0095796	009	6/30/2019	000530 - Total Suspended Solids	144		70		MGL	010 - Exceeds Concentration Maximum	20%	X	
LEXINGTON COAL COMPANY, LLC	WV0095796	009	7/31/2019	000530 - Total Suspended Solids	162		70		MGL	010 - Exceeds Concentration Maximum	131%	X	
LEXINGTON COAL COMPANY, LLC	WV0095796	009	7/31/2019	01045 - Iron, Total (as Fe)	4.88		2.46		MGL	010 - Exceeds Concentration Maximum	96%	X	
LEXINGTON COAL COMPANY, LLC	WV0095796	009	6/30/2019	000530 - Total Suspended Solids	45		35		MGL	030 - Exceeds Concentration Average	29%	X	
LEXINGTON COAL COMPANY, LLC	WV0095796	009	7/31/2019	01045 - Iron, Total (as Fe)	1.7767		1.42		MGL	030 - Exceeds Concentration Average	25%	X	
LEXINGTON COAL COMPANY, LLC	WV0095796	009	7/31/2019	000530 - Total Suspended Solids	54.6667		35		MGL	030 - Exceeds Concentration Average	56%	X	
LEXINGTON COAL COMPANY, LLC	WV0096148	005	10/1/2020	01045 - Iron, Total (as Fe)	2.51		2.46		MGL	010 - Exceeds Concentration Maximum	2%	X	
LEXINGTON COAL COMPANY, LLC	WV0096148	005	2/29/2020	01045 - Iron, Total (as Fe)	2.50		2.46		MGL	010 - Exceeds Concentration Maximum	5%	X	
LEXINGTON COAL COMPANY, LLC	WV0096148	005	1/31/2020	01045 - Iron, Total (as Fe)	2.12		1.42		MGL	030 - Exceeds Concentration Average	49%	X	
LEXINGTON COAL COMPANY, LLC	WV0096148	005	2/28/2020	01045 - Iron, Total (as Fe)	1.56		1.42		MGL	030 - Exceeds Concentration Average	10%	X	
LEXINGTON COAL COMPANY, LLC	WV0096148	005	5/31/2020	01045 - Iron, Total (as Fe)	1.4333		1.42		MGL	030 - Exceeds Concentration Average	1%	X	
LEXINGTON COAL COMPANY, LLC	WV0096148	005	4/30/2019	000530 - Total Suspended Solids	76		70		MGL	010 - Exceeds Concentration Maximum	9%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	017	4/9/2019	00981 - Selenium, Total Recoverable	10.4		6.2		UGL	010 - Exceeds Concentration Maximum	77%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	017	5/31/2019	00981 - Selenium, Total Recoverable	8.9		6.2		UGL	010 - Exceeds Concentration Maximum	86%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	017	4/30/2019	00981 - Selenium, Total Recoverable	10.88		4.7		UGL	030 - Exceeds Concentration Average	114%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	017	5/31/2019	00981 - Selenium, Total Recoverable	8.45		4.7		UGL	030 - Exceeds Concentration Average	60%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	017	6/30/2019	00981 - Selenium, Total Recoverable	7.85		4.7		UGL	030 - Exceeds Concentration Average	67%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	017	7/31/2019	00981 - Selenium, Total Recoverable	7.4		4.7		UGL	030 - Exceeds Concentration Average	57%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	017	8/31/2019	00981 - Selenium, Total Recoverable	7.45		4.7		UGL	030 - Exceeds Concentration Average	59%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	017	9/30/2019	00981 - Selenium, Total Recoverable	6.8		4.7		UGL	030 - Exceeds Concentration Average	45%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	017	10/31/2019	00981 - Selenium, Total Recoverable	8.2		4.7		UGL	030 - Exceeds Concentration Average	32%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	017	11/30/2019	00981 - Selenium, Total Recoverable	8.95		4.7		UGL	030 - Exceeds Concentration Average	24%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	018	3/31/2020	00981 - Selenium, Total Recoverable	6.45		4.7		UGL	030 - Exceeds Concentration Average	37%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	018	4/30/2020	00981 - Selenium, Total Recoverable	5		4.7		UGL	030 - Exceeds Concentration Average	8%	X	
LEXINGTON COAL COMPANY, LLC	WV1068277	018	5/31/2020	00981 - Selenium, Total Recoverable	5.4		4.7		UGL	030 - Exceeds Concentration Average	16%	X	
LEXINGTON COAL COMPANY, LLC	WV1018924	012	6/30/2019	01045 - Iron, Total (as Fe)	6.11		5.26		MGL	010 - Exceeds Concentration Maximum	16%	X	
LEXINGTON COAL COMPANY, LLC	WV1018924	012	5/31/2020	01045 - Iron, Total (as Fe)	6.64		5.26		MGL	010 - Exceeds Concentration Maximum	26%	X	
LEXINGTON COAL COMPANY, LLC	WV1018924	012	6/30/2019	01045 - Iron, Total (as Fe)	3.52		3		MGL	030 - Exceeds Concentration Average	17%	X	
LEXINGTON COAL COMPANY, LLC	WV1018924	012	12/31/2019	00981 - Selenium, Total Recoverable	5.3		4.7		UGL	030 - Exceeds Concentration Average	15%	X	
LEXINGTON COAL COMPANY, LLC	WV1018924	012	5/31/2020	01045 - Iron, Total (as Fe)	4.74		3		MGL	030 - Exceeds Concentration Average	58%	X	
LEXINGTON COAL COMPANY, LLC	WV1018924	022	6/30/2019	01105 - Aluminum, Total (as Al)	2.1515		1.99		MGL	030 - Exceeds Concentration Average	8%	X	
LEXINGTON COAL COMPANY, LLC	WV1018924	022	10/31/2019	01105 - Aluminum, Total (as Al)	2.951		1.99		MGL	030 - Exceeds Concentration Average	49%	X	
LEXINGTON COAL COMPANY, LLC	WV1019780	036	6/30/2019	01045 - Iron, Total (as Fe)	3.86		2.46		MGL	010 - Exceeds Concentration Maximum	20%	X	
LEXINGTON COAL COMPANY, LLC	WV1019780	036	6/30/2019	000530 - Total Suspended Solids	105		70		MGL	010 - Exceeds Concentration Maximum	50%	X	
LEXINGTON COAL COMPANY, LLC	WV1019780	036	6/30/2019	01105 - Aluminum, Total (as Al)	1.838		1.04		MGL	010 - Exceeds Concentration Maximum	145%	X	
LEXINGTON COAL COMPANY, LLC	WV1019780	036	10/31/2019	00981 - Selenium, Total Recoverable	6.7		6.2		UGL	010 - Exceeds Concentration Maximum	6%	X	
LEXINGTON COAL COMPANY, LLC	WV1019780	036	6/30/2019	01105 - Aluminum, Total (as Al)	0.712		43		MGL	030 - Exceeds Concentration Average	66%	X	
LEXINGTON COAL COMPANY, LLC	WV1019780	036	6/30/2019	01045 - Iron, Total (as Fe)	1.545		1.42		MGL	030 - Exceeds Concentration Average	9%	X	
LEXINGTON COAL COMPANY, LLC	WV1019780	036	7/31/2019	00981 - Selenium, Total Recoverable	4.88		4.7		UGL	030 - Exceeds Concentration Average	4%	X	
LEXINGTON COAL COMPANY, LLC	WV1019780	036	10/31/2019	00981 - Selenium, Total Recoverable	5.7		4.7		UGL	030 - Exceeds Concentration Average	21%	X	
LEXINGTON COAL COMPANY, LLC	WV101814	047	2/28/2020	00981 - Selenium, Total Recoverable	5.05		4.7		UGL	030 - Exceeds Concentration Average	7%	X	
LEXINGTON COAL COMPANY, LLC	WV101814	047	3/31/2020	00981 - Selenium, Total Recoverable	6.75		4.7		UGL	030 - Exceeds Concentration Average	32%	X	
LEXINGTON COAL COMPANY, LLC	WV1019176	005	4/30/2019	00981 - Selenium, Total Recoverable	13.5		8.2		UGL	010 - Exceeds Concentration Maximum	65%	X	
LEXINGTON COAL COMPANY, LLC	WV1019176	005	4/30/2019	00981 - Selenium, Total Recoverable	11.15		4.7		UGL	030 - Exceeds Concentration Average	137%	X	
LEXINGTON COAL COMPANY, LLC	WV1019176	005	5/31/2019	00981 - Selenium, Total Recoverable	7.6		4.7		UGL	030 - Exceeds Concentration Average	62%	X	
LEXINGTON COAL COMPANY, LLC	WV1019370	007	4/30/2019	00981 - Selenium, Total Recoverable	13.4		8.2		UGL	010 - Exceeds Concentration Maximum	63%	X	
LEXINGTON COAL COMPANY, LLC	WV1019370	007	5/31/2019	00981 - Selenium, Total Recoverable	9.8		8.2		UGL	010 - Exceeds Concentration Maximum	20%	X	
LEXINGTON COAL COMPANY, LLC	WV1019370	007	6/30/2019	000530 - Total Suspended Solids	3.56		5.47		MGL	010 - Exceeds Concentration Maximum	3%	X	
LEXINGTON COAL COMPANY, LLC	WV1019370	007	6/30/2019	00981 - Selenium, Total Recoverable	9.6		6.2		UGL	010 - Exceeds Concentration Maximum	17%	X	
LEXINGTON COAL COMPANY, LLC	WV1019370	007	4/30/2019	00981 - Selenium, Total Recoverable	11.4		4.7		UGL	030 - Exceeds Concentration Average	143%	X	
LEXINGTON COAL COMPANY, LLC	WV1019370	007	5/31/2019	000530 - Total Suspended Solids	41		35		MGL	030 - Exceeds Concentration Average	17%	X	



LEXINGTON COAL COMPANY, LLC	WV1020196	010	1/31/2020 0:00	00981 - Selenium, Total Recoverable	13.48	4.7		UGL	030 - Exceeds Concentration Average	188%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	010	2/28/2020 0:00	00981 - Selenium, Total Recoverable	18.3	4.7		UGL	030 - Exceeds Concentration Average	287%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	010	3/31/2020 0:00	00981 - Selenium, Total Recoverable	18	4.7		UGL	030 - Exceeds Concentration Average	283%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	011	10/11/2019 0:00	00981 - Selenium, Total Recoverable	16.9		8.2	UGL	010 - Exceeds Concentration Maximum	100%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	011	2/29/2020 0:00	00981 - Selenium, Total Recoverable	6.3		8.2	UGL	010 - Exceeds Concentration Maximum	1% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	011	10/11/2019 0:00	00981 - Selenium, Total Recoverable	10.6		4.7	UGL	030 - Exceeds Concentration Average	123%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	011	11/23/2019 0:00	00981 - Selenium, Total Recoverable	6.45		4.7	UGL	030 - Exceeds Concentration Average	37% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	011	12/31/2019 0:00	00981 - Selenium, Total Recoverable	7.15		4.7	UGL	030 - Exceeds Concentration Average	62% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	011	2/29/2020 0:00	00981 - Selenium, Total Recoverable	6		4.7	UGL	030 - Exceeds Concentration Average	28% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	011	3/31/2020 0:00	00981 - Selenium, Total Recoverable	4.9		4.7	UGL	030 - Exceeds Concentration Average	4% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	052	5/31/2019 0:00	00981 - Selenium, Total Recoverable	14.4		8.2	UGL	010 - Exceeds Concentration Maximum	76% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	052	7/31/2019 0:00	00981 - Selenium, Total Recoverable	20.6		8.2	UGL	010 - Exceeds Concentration Maximum	151% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	052	8/31/2019 0:00	00981 - Selenium, Total Recoverable	18.2		8.2	UGL	010 - Exceeds Concentration Maximum	122%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	9/30/2019 0:00	00981 - Selenium, Total Recoverable	16.1		8.2	UGL	010 - Exceeds Concentration Maximum	96% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	052	10/31/2019 0:00	00981 - Selenium, Total Recoverable	14		8.2	UGL	010 - Exceeds Concentration Maximum	71% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	052	11/30/2019 0:00	00981 - Selenium, Total Recoverable	17.3		8.2	UGL	010 - Exceeds Concentration Maximum	111% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	052	12/31/2019 0:00	00981 - Selenium, Total Recoverable	27.7		8.2	UGL	010 - Exceeds Concentration Maximum	177%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	1/31/2020 0:00	00981 - Selenium, Total Recoverable	16.1		8.2	UGL	010 - Exceeds Concentration Maximum	121% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	052	2/29/2020 0:00	00981 - Selenium, Total Recoverable	21.9		8.2	UGL	010 - Exceeds Concentration Maximum	167% X		
LEXINGTON COAL COMPANY, LLC	WV1020196	052	3/31/2020 0:00	00981 - Selenium, Total Recoverable	22.6		8.2	UGL	010 - Exceeds Concentration Maximum	176%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	5/31/2019 0:00	00981 - Selenium, Total Recoverable	14.4		4.7	UGL	030 - Exceeds Concentration Average	200%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	7/31/2019 0:00	00981 - Selenium, Total Recoverable	23.6		4.7	UGL	030 - Exceeds Concentration Average	335%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	8/31/2019 0:00	00981 - Selenium, Total Recoverable	17.96		4.7	UGL	030 - Exceeds Concentration Average	282%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	9/30/2019 0:00	00981 - Selenium, Total Recoverable	14.75		4.7	UGL	030 - Exceeds Concentration Average	214%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	10/31/2019 0:00	00981 - Selenium, Total Recoverable	10.15		4.7	UGL	030 - Exceeds Concentration Average	116%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	11/30/2019 0:00	00981 - Selenium, Total Recoverable	13.9		4.7	UGL	030 - Exceeds Concentration Average	238%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	12/31/2019 0:00	00981 - Selenium, Total Recoverable	17.35		4.7	UGL	030 - Exceeds Concentration Average	263%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	1/31/2020 0:00	00981 - Selenium, Total Recoverable	16.88		4.7	UGL	030 - Exceeds Concentration Average	251%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	2/28/2020 0:00	00981 - Selenium, Total Recoverable	21.6		4.7	UGL	030 - Exceeds Concentration Average	364%	X	
LEXINGTON COAL COMPANY, LLC	WV1020196	052	3/31/2020 0:00	00981 - Selenium, Total Recoverable	20.85		4.7	UGL	030 - Exceeds Concentration Average	345%	X	
LEXINGTON COAL COMPANY, LLC	WV1020641	001	7/31/2019 0:00	01045 - Iron, Total (as Fe)	0.6533		.55	MG/L	030 - Exceeds Concentration Average	19% X		
LEXINGTON COAL COMPANY, LLC	WV1020641	007	4/30/2019 0:00	01045 - Iron, Total (as Fe)	1.13		.95	MG/L	010 - Exceeds Concentration Maximum	19% X		
LEXINGTON COAL COMPANY, LLC	WV1020641	007	11/30/2019 0:00	01045 - Iron, Total (as Fe)	1.49		.95	MG/L	010 - Exceeds Concentration Maximum	57% X		
LEXINGTON COAL COMPANY, LLC	WV1020641	007	12/31/2019 0:00	01045 - Iron, Total (as Fe)	1.13		.95	MG/L	010 - Exceeds Concentration Maximum	19% X		
LEXINGTON COAL COMPANY, LLC	WV1020641	007	2/28/2020 0:00	01045 - Iron, Total (as Fe)	1.62		.95	MG/L	010 - Exceeds Concentration Maximum	52% X		
LEXINGTON COAL COMPANY, LLC	WV1020641	007	4/30/2020 0:00	01045 - Iron, Total (as Fe)	1.44		.95	MG/L	010 - Exceeds Concentration Maximum	20% X		
LEXINGTON COAL COMPANY, LLC	WV1020641	007	4/30/2019 0:00	01045 - Iron, Total (as Fe)	0.817		.55	MG/L	030 - Exceeds Concentration Average	49%	X	
LEXINGTON COAL COMPANY, LLC	WV1020641	007	11/30/2019 0:00	01045 - Iron, Total (as Fe)	0.8626		.55	MG/L	030 - Exceeds Concentration Average	87%	X	
LEXINGTON COAL COMPANY, LLC	WV1020641	007	12/31/2019 0:00	01045 - Iron, Total (as Fe)	0.615		.55	MG/L	030 - Exceeds Concentration Average	10% X		
LEXINGTON COAL COMPANY, LLC	WV1020641	007	2/28/2020 0:00	01045 - Iron, Total (as Fe)	0.659		.55	MG/L	030 - Exceeds Concentration Average	2% X		

TOTALS 84 87 10



**ATTACHMENT 3-C**  
Exceedances 07/01/20 through 09/30/20

RESPONSIBLE PARTY	PERMIT	OUTLET	DATE	PARAMETER	REPORT AVG	REPORT MAX	LIMIT AVG	LIMIT MAX	Inst. units	noncompliance	% Exceedance	Degree of noncompliance		
												MIN	MOD	MAJ
LEXINGTON COAL COMPANY, LLC	WV1020005	056	7/31/2020 0.00	00381 - Selenium, Total Recoverable	8.8		8.2		UGL	010 - Exceeds Concentration Minimum	7%	X		
LEXINGTON COAL COMPANY, LLC	WV9096148	005	8/25/2020 0.00	01055 - Manganese, Total (as Mn)	1.03		1		MGR	030 - Exceeds Concentration Average	3%	X		
LEXINGTON COAL COMPANY, LLC	WV1020005	056	7/31/2020 0.00	00381 - Selenium, Total Recoverable	6.15		4.7		UGL	030 - Exceeds Concentration Average	73%		X	
LEXINGTON COAL COMPANY, LLC	WV1020005	056	8/31/2020 0.00	00381 - Selenium, Total Recoverable	4.75		4.7		UGL	030 - Exceeds Concentration Average	3%	X		
<b>TOTALS</b>												3	1	0

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:** Lexington Coal Company, LLC **WVNPDES No.:**

WV0058113, WV0041734,  
WV0095796, WV0096148,  
WV1002040, WV1004328,  
WV1016024, WV1017080,  
WV1020641, WV1019970,  
WV1018914, WV1019716,  
WV1020005, WV1020196 and  
WV1008277

**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	TAI	TAI	TAI	TI	TI	TI	
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	
<b>Average Potential for Harm Factor</b>			1	1	1.2	1.4	1.4	1.6	1.8	1.8	2	1.2	1.2	1.4	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	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.





		Extent of Deviation from Requirement		
		Major	Moderate	Minor
<b>Potential for Harm to Human Health or the Environment</b>	<b>Major</b>	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	<b>Moderate</b>	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	<b>Minor</b>	\$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	144	\$144,000
No T	Minor	Moderate	\$1,500	123	\$184,500
No T	Moderate	Major	\$4,200	12	\$50,400
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	\$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
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
<b>Total Base Penalty</b>					<b>\$378,900</b>

## 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		\$75,780
6.2.b.4 - Compliance/noncompliance history -	20		\$75,780
6.2.b.6 - Economic benefits - (flat monetary increase)	\$4,000		\$4,000
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)		Decrease to \$125,000 per WV Code 22-11- 229a)(b)(1)	<b>\$409,520</b>
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
<b>Penalty Adjustments</b>			<b>(\$253,900)</b>
<b>Penalty =</b>			<b>\$125,000</b>

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	\$4,000
<b>Estimated Economic Benefit</b>	<b>\$4,000</b>
<b>Comments:</b>	Competitive advantage: Effluent violations @ \$1,000/quarter x 4 quarters = \$4,000



