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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 SE  
Charleston, WV 25304-2345  
Phone: (304) 026-0490

Harold D. Ward, Cabinet Secretary  
dep.wv.gov

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

TO: ICG Tygart Valley, LLC  
100 Tygart Drive  
Grafton, WV 26354

DATE: June 9, 2025

ORDER NO.: M-25-486

**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 ICG Tygart Valley, LLC (hereinafter “ICG Tygart”).

**FINDINGS OF FACTS**

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

1. ICG Tygart 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 is Permit Number WV1017764 (“Permit”).
2. The WVDEP NPDES Permit was 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. ICG Tygart has reported to WVDEP that the underground mine permitted under the Surface Mining Control and Reclamation Act (SMCRA), U200406, encountered an unexpected flooding at its District 8 bleeder shaft on or around June 5, 2025. ICG Tygart immediately began pumping activities to relieve the water that was flooding the bleeder shaft.

4. On February 24, 2025, ICG Tygart submitted Modification No. 13 to the Permit (NPM 13). NPM 13 was submitted in conjunction with the associated SMCRA Permit No. U200406 Incidental Boundary Revision (IBR) No. 26. IBR No. 26 is pending approval to add 1.85 acres for the construction of the District 8 Pond which will add one NPDES outlet (013) and two Article 3 In-stream Monitoring Sites (USLSC12 and DSLSC12).
5. NPM 13 proposes to convert existing Pond No. 9 from a cuttings pond to a drainage pond to handle excess underground mine water that will be pumped to the surface at 1,000 gpm as well as approximately 2.51 acres of drainage area and 1.85 acres of disturbed area.
6. ICG Tygart has requested to enter into an Administrative Order to dewater the District 8 bleeder shaft. Dewatering the underground mine will require the construction of Outlet 013. The proposed discharge from Pond No. 9 is necessary for the health and safety of the Leer Mine employees before the NPDES application is approved.

### **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. ICG Tygart shall obtain approval of NPM 13 to cover all point source discharges associated with SMCRA Permit U200406. ICG Tygart shall diligently pursue approval by submitting required corrections within 14 days of receipt.
2. With the entry of this Order, when pumping begins and continues to the temporary pond, ICG Tygart shall monitor at the proposed Outlet location, on a daily frequency, at those times in which ICG Tygart is pumping and discharging at the proposed Outlet location, for compliance with the effluent limitations outlined Table A below:

TABLE A	
PARAMETER	DAILY MAX LIMIT
Flow	Report Only
Total Dissolved Solids	Report Only
Aluminum, Dissolved	Report Only
Specific Conductance	Report Only
Total Sulfates	Report Only
Iron, Total	0.81 mg/L
Aluminum, Total	0.28 mg/L
Manganese, Total	4 mg/L
Total Suspended Solids	70 mg/L
Settleable Solids	0.5 mL/L
pH	Min – 6; Max - 9
Selenium, Total Recoverable	8.2 µg/L

3. Submittals made pursuant to paragraph 1 of this section shall be recorded on paper Discharge Monitoring Reports (DMRs) which are included in Attachment 1 of this Order. The required DMRs may be submitted together after pumping operations have ceased. All DMR submittals shall be mailed to:

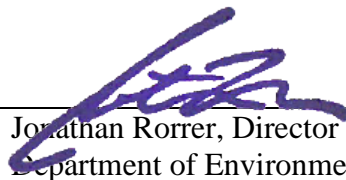
Jamie Hopen, NPDES Enforcement Program Manager  
WVDEP – Division of Mining and Reclamation  
601 57<sup>th</sup> St. SE  
Charleston, WV 25304

4. Any exceedance of the daily limits outlined in Table A shall be reported to the NPDES Enforcement Program Manager within 24 hours of ICG Tygart becoming aware of the exceedance.
5. When the proposed Outlet is discharging, ICG Tygart shall conduct daily monitoring at the proposed sites of USLSC12 and DSLSC12 for the same parameters in Table A. These monitoring sites will be considered “report only.”
6. Monitoring pursuant to this Order will cease upon termination of the temporary discharge from the District 8 bleeder shaft to relieve the flooding. The issuance of this Order does not alleviate the ICG Tygart’s responsibility to diligently pursue issuance of NPM 13, nor does it convey the ability to continue to discharge prior to issuance of NPM 13 once the flooding of the District 8 shaft is resolved.
7. ICG Tygart shall immediately begin an investigation into the cause of the unexpected flooding of District 8. Once the cause is identified, ICG Tygart shall submit a causation report to WVDEP and begin implementation of all prudent measures to minimize the source so as to reduce the amount of pump discharge to the lowest rate practicable.
8. Stipulated penalties
  - a. Beginning with the entry date of this Order, ICG Tygart shall be liable for stipulated penalties for violations of items 1, 2 and 3 of this section. These stipulated penalties shall be effective until termination of this Order. These stipulated penalties accrue as follows:
    - i. \$2,000 for each instance of failure to submit required corrections within 14 days.
    - ii. \$5,000 for each day for which ICG Tygart fails to submit required paper DMRs.
    - iii. \$1,000 for each violation of a daily maximum limit.

## **OTHER PROVISIONS**

1. ICG Tygart 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, ICG Tygart 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, ICG Tygart 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 ICG Tygart 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, ICG Tygart 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 ICG Tygart becomes aware of such a delay, notification shall be provided to the 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 ICG Tygart 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 ICG Tygart (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 ICG Tygart 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 ICG Tygart to additional penalties and injunctive relief in accordance with the applicable law.
5. This Order shall terminate upon the verification of WVDEP that ICG Tygart has met all requirements with the Order and is in full compliance.
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 ICG Tygart, its successors and assigns.

8. The effective date of this Order shall be the date the Order is executed by the Director.



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

June 9, 2025

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Date

# **ATTACHMENT 1**