

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL
COALITION, INC., WEST VIRGINIA
HIGHLANDS CONSERVANCY, INC.,
COAL RIVER MOUNTAIN WATCH, INC.,
and SIERRA CLUB,**

Plaintiffs,

v.

CIVIL ACTION NO. 3:10-cv-833

**COAL-MAC, INC., and MINGO LOGAN
COAL COMPANY,**

Defendants.

CONSENT DECREE

I. RECITALS

1. On June 17, 2010, Plaintiffs Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy, Inc., Coal River Mountain Watch, Inc., and Sierra Club (collectively “Plaintiffs”) filed a Complaint for Declaratory and Injunctive Relief and for Civil Penalties in this civil action against Defendants Coal-Mac, Inc., and Mingo Logan Coal Company (“Defendants”).

2. On December 3, 2010, Plaintiffs filed their First Amended Complaint for Declaratory and Injunctive Relief and for Civil Penalties in this civil action against Defendants.

3. The First Amended Complaint alleged that Defendants had discharged concentrations of selenium in excess of the effluent limits for that parameter contained in West Virginia/National Pollution Discharge Elimination System (“WV/NPDES”) Permit Nos. WV1003763, WV0068764, WV1004956, and WV0096369 issued to Defendants by the West Virginia Department of Environmental Protection (“WVDEP”) pursuant to Section 402 of the

federal Clean Water Act (“CWA”) and the West Virginia Water Pollution Control Act. The Complaint further alleged that Defendants’ discharges of selenium in concentrations exceeding those permitted by its WV/NPDES permits constituted a violation of the performance standards under the federal Surface Mining Control and Reclamation Act of 1977 (“SMCRA”), and that Defendants had violated certain compliance orders issued to them by WVDEP regarding selenium. Specifically, Plaintiffs alleged that Defendants had violated Amended Order No. 5 related to WV/NPDES Permit WV0068764, Amended Order No. 45 related to WV/NPDES Permit WV1004956, Amended Order No. 30 related to WV/NPDES Permit WV1011120, and Order No. 771 related to WV/NPDES Permit WV0096369.

4. On March 31, 2011, the Court issued a Memorandum Order and Opinion granting Plaintiffs summary judgment on their First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Claims for Relief, and finding that Plaintiffs are entitled to permanent injunctive relief and that a civil penalty may be assessed against Defendants. Doc. # 89 at 48–50. The Court further determined that a hearing would be held to determine the scope of injunctive relief and the amount of any civil penalties to be assessed. *Id.* at 50.

5. The Parties agree to the dismissal of Plaintiffs’ claims regarding WV/NPDES Permit WV1011120 and Outfall 003 of WV/NPDES Permit WV0068764 without prejudice. The Parties agree to the dismissal of Plaintiffs’ claims regarding Outfall 002 of WV/NPDES Permit WV1003763 with prejudice as to violations through the Effective Date of this Consent Decree because those claims have been addressed by the Order granting Plaintiffs’ Motion to Intervene in *United States, et al. v. Arch Coal, Inc.*, Civil Action No. 2:11-cv-133. Plaintiffs also acknowledge that this Consent Decree resolves any objections they have to the

proposed Consent Decree in *United States, et al. v. Arch Coal, Inc.*, Civil Action No. 2:11-cv-133.

6. The Parties recognize, and the Court by entering this Consent Decree finds, that the Consent Decree has been negotiated by the Parties in good faith and will avoid further litigation among the Parties, and that this Decree is fair, reasonable and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

II. JURISDICTION AND VENUE

7. For purposes of this Consent Decree, the Parties agree that this Court has jurisdiction over the Parties and over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 33 U.S.C. § 1365 (CWA citizen suit provision) and 30 U.S.C. § 1270 (SMCRA citizen suit provision).

8. Venue is proper in the Southern District of West Virginia pursuant to 28 U.S.C. § 1391(b) and (c), because it is the judicial district in which Defendants are located, reside and/or do business, and/or in which the violations alleged in the Complaint occurred, as well as 33 U.S.C. § 1365(c)(1), because the sources of the alleged CWA violations are located in this judicial district, and 30 U.S.C. § 1270(c), because the coal mining operations complained of are located in this judicial district.

9. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendants consent to this Court's jurisdiction over this Consent Decree and consent to venue in this judicial district.

III. APPLICABILITY

10. The provisions of this Consent Decree apply to and are binding upon Plaintiffs, upon Defendants and any of their respective successors and/or assigns, and upon other persons or entities otherwise bound by the law.

11. No transfer of ownership or operation of any Facility shall relieve Defendants of their obligation to ensure that the terms of this Consent Decree are implemented, provided, however that, prior to any transfer, any Defendants desiring to transfer ownership or operation of any facility shall provide a copy of this Consent Decree to the proposed transferee and require the transferee to provide written confirmation acknowledging the terms of the Consent Decree and that the transferee will be bound by those terms. In such event, said Defendant shall no longer be subject to this Decree.

12. Defendants shall provide a copy of this Consent Decree to all officers, employees and agents whose duties include compliance with any provision of this Consent Decree, as well as to CH2M HILL. CH2M Hill has designed the treatment system for Outlet 014 on Permit No. WV0068764, and Defendants shall continue to consult with CH2M Hill as to the construction and start-up of the system. Likewise, Defendants shall consult with CH2M Hill as to design, construction and planned operation of the abatement systems planned for the remaining Outlets listed in Paragraph 13 of this Decree.

IV. DEFINITIONS

13. Terms used in this Consent Decree that are defined in the CWA, SMCRA or in regulations issued pursuant thereto shall have the meanings assigned to them therein, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Complaint” shall mean the First Amended Complaint for Declaratory and Injunctive Relief filed by Plaintiffs in this action on December 3, 2010;

b. “Consent Decree” or “Decree” shall mean this Consent Decree and the appendices attached hereto;

c. “Daily maximum violation” shall mean an exceedance of the effective daily maximum effluent limit of the applicable WV/NPDES Permit.

d. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next business day except for purposes of calculating periods of compliance under Section VII of this Decree;

e. “DMR” means a Discharge Monitoring Report for one of the WV/NPDES permits identified herein;

f. “Effective Date” shall have the definition provided in Section XV;

g. “Facility” or “Facilities” shall mean Defendants’ discharge Outlets at mining operations subject to WV/NPDES Permit Nos. WV0068764, WV1004956, and WV0096369;

h. “Maximum daily effluent limit” shall mean maximum daily discharge limitation as defined in 40 C.F.R. § 122.2;

i. “Monthly average effluent limit” shall mean average monthly discharge limitation as defined in 40 C.F.R. § 122.2;

j. “Monthly average violation” shall mean an exceedance of the effective monthly average effluent limit of the applicable WV/NPDES Permit;

k. “Outlet” or “Outfall” shall mean the following WV/NPDES-permitted discharge points: WV0068764 Outlets 001 and 014; WV1004956 Outlets 001 and 015; and WV0096369 Outlet 001;

l. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral;

m. “Parties” shall mean Plaintiffs and Defendants;

n. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral;

o. “State” shall mean the State of West Virginia;

p. “Selenium Treatment System” shall mean a selenium abatement system designed to achieve compliance with applicable NPDES permit limits.

q. “USEPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

r. “WVDEP” shall mean the West Virginia Department of Environmental Protection;

s. “WV/NPDES permit” shall mean a West Virginia / National Pollutant Discharge Elimination System permit issued by WVDEP pursuant to Section 402 of the CWA.

V. CIVIL PENALTY

14. Defendants shall pay a civil penalty in the amount of \$ 200,000.00 to the United States as set forth in Paragraph 15, below. Together with the Supplemental Environmental Project to be funded as set forth in Section VI, the payment of this civil penalty is made in settlement of all of Plaintiffs’ claims in this action for effluent limit violations occurring prior to the effective date of this Consent Decree.

15. Defendants shall pay the civil penalty due to the United States Treasury within thirty (30) days of the entry of this Decree. That payment shall be made by check or money order to the Treasurer of the United States and should be sent to the following address: Debt Collection Specialist, Environment and Natural Resources Division, Executive Office, PO Box 7754, Ben Franklin Station, Washington D.C. 20044-7754. The check or money order shall reference *Ohio Valley Environmental Coalition, Inc., et al. v. Coal-Mac, Inc., et al.*, Civil Action No. 3:11-cv-00833, and payment shall be considered paid upon mailing, or direct delivery to the specified address. A copy of the check and cover letter shall be sent to Plaintiffs at the time payment is made, and shall state that payment is being made pursuant to this Decree.

16. The sum set forth in Paragraph 14, *supra*, resolves Plaintiffs' demands for civil penalties for its claims in the Complaint arising from any selenium violations alleged in Plaintiffs' Complaint of WV/NPDES Permit Nos. WV0068764, WV1004956, and WV0096369 that have occurred or may occur up to the termination of this Decree.

17. Defendants shall not deduct any penalties paid under this Consent Decree pursuant to this Section in calculating its federal, state or local income tax.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

18. In addition to the civil penalty set forth in Section V, *supra*, Defendants shall pay a total of \$ 1,800,000.00 to the West Virginia College of Law in order to fund a Supplemental Environmental Project ("SEP")

a. The SEP funds will support the Land Use and Sustainability Clinic ("Clinic") established pursuant to the Consent Decree in Sierra Club et al. v. Powellton Coal Co., Civ. No. 2:08-cv-1363. Appendix A to this decree describes how the funds will support and expand the Clinic.

b. Defendants shall remit the funds identified in this Paragraph by certified check, bank check, or money order to the West Virginia University Foundation within thirty (30) days of the entry of this Decree and shall send the funds to the following address:

West Virginia University Foundation
1 Waterfront Place, 7th Floor
PO Box 1650
Morgantown, WV 26506

The check or money order shall reference Ohio Valley Environmental Coalition et al. v. Coal-Mac, Inc., et al., Civil Action Number 3:10-cv-833, and payment shall be considered paid upon mailing, or direct delivery to the specified address. A copy of the check and cover letter shall be sent to Plaintiffs at the time payment is made, and shall state that payment is being made pursuant to this Decree.

19. Defendants shall not deduct its contribution to the SEP or any payments made pursuant to Section IX (“Stipulated Payments”) in calculating its federal, state or local income tax.

VII. COMPLIANCE REQUIREMENTS

20. This Consent Decree in no way affects or relieves Defendants of their responsibility to comply with applicable federal, state and local laws, regulations and permits, but Plaintiffs shall not seek any remedies or penalties under the CWA or SMCRA for violations of selenium effluent limits at the affected Outlets so long as this Decree is in effect, other than those remedies and penalties set forth herein.

21. Where any compliance obligation under this Section requires Defendants to obtain a federal, state or local permit or approval, Defendants shall submit timely and substantially complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the

provisions of Section X of this Consent Decree (“Force Majeure”) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and substantially complete applications and have taken all other actions necessary to obtain all such permits or approvals.

22. Defendants shall measure the flow from the Outfalls and sample the effluent for selenium from the Outfalls identified in Section IV, ¶13(k) at least once per week during the term of this Decree as it applies to the individual Outfall. For purposes of this Decree, a sample result of “no flow” cannot be used to calculate the monthly average concentration, nor shall it interrupt any sequence of consecutive compliance events required in this Decree.

23. Defendants shall complete construction of their proposed Selenium Treatment Systems at each Outfall by the date set forth in Appendix B.

24. Within three (3) months of entry of this Decree, Defendants will identify one or more Alternative Treatment Plans for each Outfall to Plaintiffs and the Special Master. Alternative Treatment Plans include, at a minimum, fluidized bed reactors (“FBR”), GE Water and Process Technologies’ ABMet system or other active biological treatment system, and reverse osmosis. Defendants may also identify a different technology(ies) at any time, including after the three month period and, if Plaintiffs agree, Defendants may implement the different technology(ies). Implementation shall only be required as set forth below in Paragraph(s) 29 and 30 of this Decree. Plaintiffs’ failure to object to a particular technology identified pursuant to this paragraph

at the time it is identified is not a waiver of their right to object to that technology if identified as Defendants' choice of treatment technology for purposes of Paragraph 25.

25. If at any time six (6) months after the completion date of any Selenium Treatment System at a particular Outlet, Defendants violate the daily maximum selenium effluent limitations at that Outlet more than two (2) times or violate the average monthly selenium effluent limitations at that Outlet in two (2) consecutive months, then within 30 days of those violations, Defendants will choose a technology from the list submitted to the master pursuant to Paragraph 24. If Plaintiffs do not object to that technology, then within 90 days of the violations described above, Defendants shall submit to Plaintiffs and the Special Master the following information for the Alternative Treatment Plan for that Outlet:

A process design narrative describing the effluent limits which will be met;

A listing of treatment objectives applicable to the design;

The characteristics of the water to be treated;

An engineering evaluation of applicable technologies capable of successfully treating the water;

Selection of the best technology;

A narrative description of the design in sufficient detail to be reviewed by persons competent in water/wastewater treatment technologies;

Process design summary tables containing selected design parameters;

Preliminary size of major unit processes and ancillary equipment required;

Preliminary estimates of chemical requirements;

A process flow diagram containing primary flow lines;

Major unit processes;

Preliminary flow and material balances;

A Class 5 Capital cost estimate and operating cost estimate;

A preliminary equipment list;

If, however, Plaintiffs object to Defendants' choice of treatment technology, then the dispute shall be submitted to the Special Master for resolution.

26. The Parties acknowledge that the first six months after a Selenium Treatment System has been completed and begins discharging will be a start-up period, as biological materials become active and Defendants adjust the Selenium Treatment System. Therefore, sampling data acquired during months one (1) through six (6) after a Selenium Treatment System has been completed and started discharging shall not be used to determine whether Defendants will be required to implement an Alternative Treatment Plan, though Defendants may still use those data to seek termination of the Decree as contemplated in Paragraph 29.

27. For months seven (7) through twelve (12) following the completion date of any Selenium Treatment System at a particular Outfall, if more than five (5) of the samples required for implementation of the Decree exceed the daily maximum selenium effluent limitations or if the monthly average selenium concentration exceeds the monthly average selenium effluent limitation for two consecutive months, then Defendants will implement an Alternative Treatment Plan for that Outfall as soon as reasonably possible, except that Defendants shall have the right to seek approval to continue using the Initial Selenium Treatment System. Defendants must seek approval from the Special Master and will bear the burden of proving that they will be able to attain the required compliance described below without implementing the Alternative Treatment Plan. In any such determination, the Special Master may consider the extent to which the violations exceeded the permit limits, the flows and other operating conditions.

28. In the event that Defendants achieve compliance with their daily maximum selenium effluent limitations less than 90% of the time at an individual Outlet over any six-month period following the twelve-month period after the completion date of the Selenium Treatment System for that Outfall or if Defendants fail to achieve compliance with their monthly average selenium limitation for two consecutive months following that twelve-month period, then Defendants shall have the burden of demonstrating that they should not have to implement the Alternative Treatment Plan and comply with their permit limits as soon as reasonably possible for that Outlet. That determination shall be made by the Special Master and is appealable to the Court. In any such determination the Special Master may consider the extent by which the violations exceeded the permit limits, the flows and other operating conditions he or she deems appropriate.

29. Following the completion date of each Selenium Treatment System, the Decree shall remain in effect for the individual Outlet(s) at which such Selenium Treatment System(s) are constructed until that Outlet has achieved 100% compliance with its selenium effluent limitations for six (6) consecutive months, three months of which must include analyses of samples taken in December, January, February or March of a winter with normal temperature and precipitation, in order to ensure that the Selenium Treatment System will effectively treat selenium during conditions that may pose greater challenges to treatment efficiency for the planned passive Selenium Treatment Systems. After any six-month period that Defendants believe satisfies the compliance requirements of this paragraph, Defendants may notify Plaintiffs in writing that they consider the Decree terminated as to such Outlet. After receipt of a notice

from Defendants, Plaintiffs shall have thirty (30) days to object to the Special Master that winter conditions did not meet the required criteria. After providing an opportunity for a response from Defendants and a reply from Plaintiffs, any dispute between the Parties shall be resolved by the Special Master. In any such dispute, the Plaintiffs shall bear the burden of proof. For the purposes of the termination provisions of this Decree, compliance with the monthly average limitations shall be calculated as an average over the entire six (6) month period

30. If Defendants fail to terminate the decree as described in the above paragraph within 30 months of the lodging of this Decree because Plaintiffs establish that the winter conditions did not meet the required criteria of Paragraph 29, then the 30-month period for demonstrating compliance shall be extended for 12 months, in accordance with Paragraph 66. During any such extension, the stipulated payments described in Paragraph 42 shall be reduced by 50%. If Defendants achieve compliance for six (6) consecutive months, three of which must include December, January, February, or March, at an Outlet as prescribed in Paragraph 29 during this extension period, then this Decree shall terminate as to that Outlet regardless whether Plaintiffs consider the temperatures or precipitation to be abnormal. If Defendants fail to achieve the compliance described in the above paragraph within thirty (30) months for any other reason, then they must implement the Alternative Treatment Plan to achieve compliance as soon as reasonably possible for that Outlet, unless they establish to the Special Master or the Court that extraordinary circumstances prevented them from achieving 100% compliance over a six-month period and that they will be able to attain compliance with their selenium effluent limitation as soon as reasonably possible

without implementing the Alternative Treatment Plan. Defendants will bear the burden of establishing those extraordinary circumstances.

31. Defendants will treat flow sufficient to comply with its permit requirements. If the Parties are unable to agree on that flow, the Special Master shall resolve the dispute.

VIII. REPORTING REQUIREMENTS

32. Defendants shall submit the results of the weekly sampling required herein on a monthly basis within 20 days of the end of the preceding month. Those results shall include all results of selenium and flow monitoring conducted pursuant to Paragraph 22 of this Decree and all monitoring of selenium discharges and flow at Outfall 002 of WV1003763 which are required to be submitted to WVDEP.

33. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (“Notices”).

34. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligation required by the CWA, SMCRA or their implementing regulations, or by any other federal, state or local law, regulation, permit or other requirement.

35. Any information provided pursuant to this Consent Decree may be used by Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

IX. STIPULATED PAYMENTS

36. Defendants shall be liable for stipulated payments for violations as specified below, unless excused under Section X (“Force Majeure”).

37. Stipulated payments shall be paid to the West Virginia University College of Law identified in the SEP described in Section VI.

38. Accrued stipulated payments shall be satisfied in full through payment as set forth in Paragraphs 28 and 34.

39. A daily maximum violation or monthly average violation as reported on Defendants' DMRs shall constitute one (1) violation for purposes of this Section.

40. Plaintiffs may, in the unreviewable exercise of their discretion, reduce or waive stipulated payments otherwise due under this Consent Decree.

41. No stipulated payments shall accrue during the first 12-month period following completion of construction of a Selenium Treatment System for an Outfall.

42. From month thirteen following completion of construction of a Selenium Treatment System for an Outfall, through the termination of this Decree for that Outfall, stipulated payments shall accrue per violation for each reported daily maximum violation or monthly average violation: \$25,000.00 for each monthly average violation and \$12,500.00 for each daily maximum violation

43. Defendants shall submit stipulated payments due as a result of noncompliance under Paragraph 42 at the end the month following the conclusion of each calendar quarter (i.e., by April 30, July 31, October 31 and January 31). Defendants shall make payments to the West Virginia University Foundation following the procedure specified in Section VI herein. Notice of such payment shall be sent to Plaintiffs.

X. FORCE MAJEURE

44. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the reasonable control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, which delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using

best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

45. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to Plaintiffs within five business(5) days of when Defendants first knew that the event might cause a delay. Within 14 Days thereafter, Defendants shall provide in writing to Plaintiffs an explanation of the reasons for the delay; the anticipated duration of the delay; and actions taken or to be taken to prevent or minimize the delay.

46. If Plaintiffs agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by Plaintiffs for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. Plaintiffs will notify Defendants in writing within 5 business days of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

47. If Plaintiffs do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, Plaintiffs will notify Defendants in writing of its decision with five (5) days of its receipt of the Force Majeure claim by Defendants. Any dispute between the Parties over a Force Majeure claim may be resolved by the Special Master.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

48. This Consent Decree resolves the civil claims of Plaintiffs for the violations alleged in the Complaint in this action, filed on December 3, 2010, through the termination of this Decree.

49. Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations or permits, except as set forth herein. Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree shall result in compliance with provisions of the Act, 33 U.S.C. § 1311, et seq., or with any other provisions of federal, state or local laws, regulations or permits.

50. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

51. Defendants shall pay reasonable costs and attorneys' fees, including expert witness fees and costs incurred by Plaintiffs in conjunction with this civil action through the Effective Date of this Consent Decree, in accordance with the fee-shifting provisions of the CWA and SMCRA. The Parties have agreed that those costs and fees will not exceed \$150,000. Of that amount, \$ 107,777.00 is for Plaintiffs' reasonable attorneys' fees, allocated as follows:

- a. \$46,565.25 for Derek Teaney's 198.15 hours at the reasonable rate of \$235/hour.
- b. \$31,155.00 for Joseph Lovett's 93 hours at the reasonable rate of \$355/hour.
- d. \$5,625.00 for Jim Hecker's 15 hours at the reasonable rate of \$375/hour.
- e. \$3,013.50 for Isak Howell's 14.7 hours at the reasonable rate of \$205 per hour.

- f. \$11,182.50 for Benjamin Luckett's 63.9 hours at the reasonable rate of \$175 per hour.
- g. \$10,235.75 for Amy Dawson's 58.49 hours at the reasonable rate of \$175 per hour.

In addition to attorney fees, Plaintiffs' costs and expert expenses were \$37,608.92.

52. Not later than twenty (20) days from the entry of this Consent Decree, Defendants shall deliver to Plaintiffs' counsel a check for \$ \$145,385.92 made payable to the Appalachian Center for the Economy and the Environment, Inc. The Appalachian Center for the Economy and the Environment, Inc., shall be wholly responsible for the proper distribution of any portions of the delivered sum to any and all other attorneys, experts or other entities who may be entitled thereto. The sum delivered under this paragraph shall be a complete settlement of Plaintiffs' claims for costs and fees incurred up to the Effective Date of this Consent Decree, and thereafter for responding to possible comments on this Decree by the Department of Justice.

53. Plaintiffs retain the right to seek costs, including attorneys' and expert witness fees for their work related to (a) monitoring Defendants' compliance with the Decree, and (b) proceedings to interpret or enforce the terms of the Decree.

XIII. SPECIAL MASTER

54. The Parties consent to the appointment of a Special Master agreed to by the Parties to oversee the implementation of this Decree and to make certain determinations, described above, during the course of the Decree's implementation. In the event of a disagreement among the Parties, the Court may appoint a Special Master of its choosing.

55. Defendants will bear the costs and fees associated with the Special Master.

56. As described above, Defendants must first present any dispute or request for relief from the terms of this Decree to Plaintiffs in writing. Plaintiffs shall have fourteen (14) days to respond. If Plaintiffs do not respond, or if Defendants are not satisfied with Plaintiffs'

response, they may invoke the Special Master's dispute resolution authority or otherwise seek relief from the Special Master.

57. If any party is dissatisfied with the Special Master's resolution of a dispute or granting of relief to Defendants, it may request that the Court resolve the matter.

XIV. NOTICES

58. Unless otherwise specified herein, whenever notifications, submissions, reports or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To Plaintiffs:

Derek Teaney
Appalachian Mountain Advocates
P.O. Box 507
Lewisburg, WV 24901

To Defendants:

Director of Engineering and Technical Services
Arch Coal, Inc.
Eastern Operations
c/o John McDaniel
300 Corporate Centre Drive
Scott Depot, WV 25560

59. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

60. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

61. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter this Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

62. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Section XVII ("Modification") or effectuating or enforcing compliance with the terms of this Decree.

63. Plaintiffs and Defendants reserve all legal and equitable rights and defenses available to them to enforce or defend the provisions of this Consent Decree.

XVII. MODIFICATION

64. The terms of this Consent Decree, including the attached appendices, may be modified only by a subsequent written agreement signed by all Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

XVIII. TERMINATION

65. Except as otherwise provided in Paragraphs 30 and 66, this Consent Decree shall terminate, with respect to each Outfall, at the earlier of the following two dates: (1) when compliance is demonstrated for the six-month period provided for in Paragraph 29; (2) 30 months from the completion date for the completed Outfall, unless Defendants fail to achieve 100% compliance for a six consecutive month period, which must include at least one winter as described above. In that case, this Consent Decree shall terminate when Defendants have

completed construction and commissioning of the Alternative Treatment Plan described in Paragraph 25 or upon such other terms as allowed by the Special Master as described above.

66. The term of this Consent Decree will be extended if, under Paragraphs 29 and 30 above, Plaintiffs prove that one or more winters did not constitute a winter of normal temperature and precipitation and if Defendants are thereby unable to demonstrate compliance during the 30-month period after the lodging of the Consent Decree. In that event, Defendants shall have an additional 12 months to demonstrate compliance in accordance with the requirements of Paragraph 29, except that Plaintiffs may not claim that a third consecutive winter is abnormally warm or had abnormally low levels of precipitation for purposes of demonstrating compliance. .

XIX. SIGNATORIES/SERVICE

67. Each undersigned representative of Plaintiffs and Defendants certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

68. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

XX. INTEGRATION

69. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

70. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to Plaintiffs and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXII. APPENDICES

71. The following appendices are attached to and part of this Consent Decree:

Appendix A.

Appendix B.

ENTER: _____, 2011

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

For the Plaintiffs Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy, Inc., Coal River Mountain Watch, Inc., and Sierra Club

/s/ Derek O. Teaney Dated: September ²⁹~~28~~, 2011
DEREK O. TEANEY (WV Bar No. 10223)
Appalachian Mountain Advocates
P.O. Box 507
Lewisburg, WV 24901
304-793-9007

For the Defendants Coal-Mac, Inc., and Mingo Logan Coal Company

/s/  Dated: September 28, 2011

ROBERT G. McLUSKY, WVBN 2489
MATTHEW S. TYREE, WVBN 11160
JACKSON KELLY, PLLC
1600 Laidley Tower
Post Office Box 553
Charleston, West Virginia 25322
304-340-1381

APPENDIX A

Outline of Proposal for Consent Decree Settlement with Arch Coal

WVU College of Law Land Use and Sustainable Development Law Clinic

LAND USE EDUCATION AND LEADERSHIP TRAINING

OVERVIEW AND SUMMARY

This proposal builds upon the Powellton Decree by (1) expanding the geographic scope to include the Kanawha watershed, in addition to the New and Gauley watersheds, and (2) expanding the activities of the Land Use and Sustainable Development Law Clinic to include *Land Use Education and Leadership Training* throughout the New, Gauley and Kanawha watersheds. The proposal includes the following elements:

- Hiring a Lead Land Use Attorney, on or around July 2012, to direct the Clinic's Land Use Education and Leadership Training activities;
- Hiring two supporting land use attorneys, on or around November 2012, to support both the transactional legal assistance activities under the Powellton Decree as well as the work of the Lead Land Use Attorney in providing leadership training on land use and sustainability issues;
- Hiring an experienced land use planner, a non-legal position, on or around November 2012;
- Hiring an additional faculty member at the College of Law, commencing in Fall 2012, specializing primarily in real estate and water law; and
- Hiring a full-time office manager to provide administrative support to the Clinic.

The proposal also includes funding for stipends for 1- and 2-year fellowships for law school graduates to assist the clinical faculty in the work of the Clinic, which will provide the training and experience for beginning lawyers with respect to land use and sustainable development issues. Funding is also provided for focused education and training directed at county and local government officials to promote adoption of sustainable land use policies and practices.

INTRODUCTION

The West Virginia University College of Law (College of Law) is developing a Land Use and Sustainable Development Law Clinic (Clinic) as a Supplemental Environmental Project (SEP) under the Consent Decree in Case 2:08-cv-01363 (Powellton Decree). Under the Powellton Decree, the Clinic is focusing on providing transactional/non-litigation legal services to individuals, non-governmental organizations (NGOs), local governments and communities required to address land use and conservation needs in two particular watersheds in West

Virginia – the Gauley and New River watersheds – to protect water quality and quantity for sustainable communities. By focusing on these watersheds, the Clinic will assist in addressing important other water quality issues in the same waters where contour surface mining has taken place and has been at issue in the recent litigation.

This proposal expands on the role of the Clinic in two respects:

- Expansion of the geographic scope of the Powellton Decree to include the Kanawha watershed, in addition to the New and Gauley watersheds; and
- Expansion of the activities of the Clinic to include *Land Use Education and Leadership Training* throughout the New, Gauley and Kanawha watersheds.

West Virginia has significant needs for funding for land and water conservation. Other neighboring states have more resources than West Virginia in terms of public and private conservation infrastructure to support land and water conservation efforts. The Clinic will provide an excellent opportunity to provide legal services to environmentally impacted areas in the state and to build the experience and expertise of lawyers in land use and sustainable development. The education and training component of the Clinic's activities will provide valuable training to county and local government officials within the three watersheds on land use and sustainable development practices and policies.

This *Land Use Education and Leadership Training* proposal provides the following:

- Description of the expertise and capacity of the College of Law to accomplish Clinic goals.
- Description of Clinic structure.
- Analysis of nexus between the violation and Clinic as a SEP.
- Description of assessment criteria and reporting responsibility.
- Explanation of budget and funding allocations of the College of Law and the SEP.

EXPERTISE AND CAPACITY

With a 132-year history of service to the state, the College of Law remains West Virginia's sole law school. The College of Law currently has five clinics, most of which have served West Virginia citizens for decades. In addition, the College of Law has engaged in four extensive land use and sustainable development projects in which faculty and students provided legal services to rural communities to address land conservation and water quality. The long-term clinical experience and the four projects described below demonstrate the College of Law's expertise and capacity to fulfill the Clinic's goals.

- **RURAL COMMUNITIES LAND USE/WATER PROTECTION PROJECT**
Faculty Member: Dean Joyce McConnell
Partnership: Water Research Institute at WVU

Funding: USGS Grant & WVU College of Law

Description: Over a period of six years, eight law students under the supervision of Dean McConnell worked with rural communities and county commissions in West Virginia to develop land use plans, primarily for ground water protection. Counties in West Virginia included Monroe County, Greenbrier County, Berkeley County and Jefferson County. Students worked in teams with hydrogeologists, facilitated community meetings, assisted county commissioners, and provided legal support for land use plans.

- **RURAL COMMUNITIES FARMLAND PROTECTION**

Faculty Member: Dean Joyce McConnell

Partnership: WV Department of Agriculture and USDA

Funding: WVU College of Law

Description: Over a period of ten years, six law students under the supervision of Dean McConnell worked with rural communities and county commissions in West Virginia to develop farmland protection programs. Students participated in training for county commissions throughout the state, worked directly with individual county commissions and supported individual farmland protection advocates. Students also worked with conservationists throughout West Virginia to meet with landowners interested in conserving property through conservation easements. This project was focused primarily on capacity building in the counties and the project has been very successful. Nineteen counties now have farmland protection boards. A total of 11,475 acres have been protected.

- **RURAL COMMUNITIES LAND CONSERVATION SUPPORT**

Faculty Member: Dean Joyce McConnell

Partnership: WV-based conservation NGOs, state and federal agencies

Funding: WVU College of Law

Description: Over a ten-year period, student volunteers, under the supervision of Dean McConnell, worked with WV-based conservation NGOs, state and federal agencies to address legal issues raised by community-based land conservation efforts. Examples include consulting on riparian easements for stream protection, consulting on timbering and stream sedimentation, and working with NGOs on land conservation through sale or donation of development rights or fee simple interests.

- **RURAL COMMUNITIES WASTE WATER PROJECT**

Faculty Member: Dean Joyce McConnell

Partnership: National Environmental Training Center at WVU

Funding: USDA Rural Development Grant & WVU College of Law

Description: Over a period of three years, eight law students under the supervision of Dean McConnell worked with small rural communities in West Virginia and other states (Idaho, Kentucky, New Mexico, Utah and Washington) to find alternative wastewater treatment solutions. Most of the residences in these communities either used no treatment and straight-piped into streams or had failed septic systems. With a team of law students and engineers, teams worked with local communities on decentralized systems to serve the community. The work included meeting with community groups, real property research, real property transactions and facilitating the creation of waste water management entities. Each project took years. One community actually qualified for a federal grant and became connected to a nearby city's central system. Other communities used community managed individual septic systems with community drainfields.

CLINIC STRUCTURE

Expansion to Include Additional Watershed

As under the Powellton Decree, second and third-year students will work under the supervision of a College of Law faculty member, and will provide transactional legal assistance to individuals, NGOs, local governments, and communities within the watersheds to protect and enhance water quality, particularly the quality of streams flowing into the Kanawha River, in addition to the Gauley and the New Rivers addressed in the Powellton Decree.

The Clinic will be a transactional/non-litigation based program in which students will assist in protecting land and water. Legal services will be directed to the following goals:

1. To protect land essential to watershed protection through conservation/riparian easements or other land and water protection strategies.
2. To draft land use plans and ordinances, where needed and possible to protect ground and surface water quality and quantity. Provided, however, that such drafting shall not be used to prohibit or restrict mining operations.
3. To solve residential wastewater issues, such as "straight piping" (pipes that carry human waste from a residence or business without treatment directly to a stream) to protect both ground and surface water.

Additionally, the clinic's legal services will NOT be used to advise or assist any government organization to prohibit or restrict mining operations.

Land Use Education and Leadership Training

This aspect of the proposal will focus on outreach, education and training directed at county and local government officials to promote adoption of sustainable land use policies and practices. The education and leadership training will be structured along the lines of the Land Use

Leadership Alliance (LULA) training program offered by the Land Use Law Center at Pace Law School in White Plains, New York, which leads the nation in educating local land use leaders through training programs in land use law and community decision-making. Since 1995, the Pace program has graduated over 2000 leaders from its four-day intensive LULA training program.

The proposal contemplates two 4-day intensive training programs each year for local government officials within the Kanawha, New and Gauley River watersheds. It is anticipated that program participants will include respected and objective local leaders, including chairs and members of the legislative body; planning and zoning board members; administrative board members; members of other local bodies involved in the land use process; local landowners, developers, business leaders, community activists, and representatives of civic and environmental groups. Each four-day program will be designed to meet the needs of its participants and their communities by focusing on both foundational and cutting-edge information related to protection of ground and surface water quality. Participants will be given a range of tools and techniques to use in both the land use and decision-making contexts. The training program will be based on a “train the trainer” model, through which participants are empowered to share their program experience with others. This model encourages the creation of leadership networks, initiates and supports grassroots regionalism, creates opportunities for civic engagement, and fosters sustainable communities.

WVU College of Law has an existing relationship with the Pace Land Use Law Center, which will allow the Land Use and Sustainable Development Clinic at WVU to draw upon the expertise of the staff at Pace in designing a leadership training program that meets the characteristics of the program objectives for the Kanawha River watershed. James Van Nostrand, Director of the Center for Energy and Sustainable Development at the WVU College of Law, was previously Executive Director of the Pace Energy and Climate Center, which had several joint projects with the Land Use Law Center at Pace.

The proposal will provide funding for one full-time clinical faculty member (the Land Use Lead Attorney), to direct this program, including responsibility for leading the 4-day intensive training programs. The proposal also includes two additional full-time land use faculty members for the Clinic; these attorneys will be expected to support both of the Clinic’s primary activities (*i.e.*, the work the Managing Attorney in providing transactional legal assistance, and the work of the Lead Land Use Attorney in providing leadership training on land use and sustainability issues).

In addition to the legal staffing, the proposal includes funding for a land use planner, which will be a non-legal position. The land use planner can be expected to work with both the Managing Attorney and the Lead Land Use Attorney in supporting the Clinic’s activities.

In addition to full-time clinical faculty, the proposal will provide funding for stipends for 1- and 2-year fellowships for graduating WVU College of Law students to assist the clinical faculty in

the work of the Clinic. The proposal contemplates 2 fellowship positions, with staggered 2-year terms to provide continuity in the fellowship program. The fellowship program will provide the training and experience for graduating law school students with respect to land use and sustainable development issues, thereby building essential capacity to continue this work following the four-year term of the proposal. With the anticipated implementation of an LLM program in Energy and Sustainable Development at the WVU College of Law, these graduate fellows can be expected to complete their LLM degrees while working at the Clinic, and the stipend will be supplemented by tuition remission by the law school.

Administrative support for the program will be provided by a full-time office manager, and occasional part-time staff as necessary.

NEXUS WITH THE IMPACTED WATERSHED

The Environmental Protection Agency SEP Policy and the Legal Guidelines require that a nexus exist between the violation and the proposed project, but warns that ecosystem or geographic proximity alone is insufficient to establish a nexus. This proposal meets the nexus requirement as follows:

1. The activities subject to the Consent Decree have the potential to degrade water quality in the Kanawha River watersheds (and the Clinic's use of the funds allocated will benefit communities in the Kanawha River watershed, as well as the New and Gauley River watersheds).
2. The Clinic services will address potential degradation of the Kanawha River watershed (as well as the New and Gauley River watersheds) by focusing on the overall issue of ground and surface water quality, and by providing training to county and local government officials and other stakeholders on sustainable land use policies and practices that will preserve ground and surface water quality.

ASSESSMENT CRITERIA AND REPORTING SCHEDULE

The College of Law will report semi-annually to the United States Department of Justice. Assessment, based on the Clinic's goals and four-year projected funding as a SEP, will be outcome based on the Criteria below:

- Narrative description of how clinic activities meet established criteria.
- Quantitative data on number of clients, number of client contacts, category of clients, geographic location of clients, legal services requested, legal needs identified, legal needs addressed, legal solutions employed.
- Quantitative data on number of *Land Use Education and Leadership Training* sessions offered, the number of participants at each such session, and the counties and local communities represented at each such session.

- Narrative descriptions and quantitative data on number of experts, category of experts, site visits of experts, use of experts in legal services provided.
- Narrative descriptions and quantitative data on faculty time and student time dedicated to the provision of services within the Watersheds.
- Narrative identifying met and unmet land use and sustainable development legal needs.
- Narrative goals for completion of ongoing projects.

After two years of full operation of the Clinic, the semi-annual Reports will also include metrics of results developed on the basis of the initial outcomes.

BUDGET

Attached is a four-year budget reflecting the elements of the existing SEP under the Powellton Decree, combined with the additional elements proposed here (expanding the geographic scope of the Land Use and Sustainable Development Law Clinic's activities to include the Kanawha River watershed, and offering *Land Use Education and Leadership Training* throughout the Kanawha, New and Gauley River watersheds). The total preliminary budget for the combined projects is \$5,536,214. Of this total, \$1,599,926 (29%) is to be funded by the WVU College of Law, as indicated in the "WVU Law Contribution" column in the budget.

Sustainable Development Law Clinic									
Preliminary Budget Estimates - All settlements									
Four-year Totals									
			Powellton SEP	Patriot	Arch Coal				
			Settlement	Settlement	Settlement				
			Contribution	Contribution	Contribution			WVU Law	
			Costs					Contribution	
Personnel									
Faculty Director		694,600	229,600	200,000	-			265,000	(25% of JVN over 4 yrs)
Full-time Clinical Faculty		837,400	57,400	140,000	480,000			160,000	
Faculty Services		150,000						150,000	(approx value of other faculty assisting clinic)
Full-time staff		190,000		70,000	120,000				
Part-time staff		50,000						50,000	(approx value of other staff assisting clinic)
Fringe Benefits (@25%)		480,500	71,750	102,500	150,000			156,250	625,000
Consultants									
Individual Expert Professionals		200,000	200,000						
Graduate Fellowships									
Stipends		240,000			240,000				
Land Use Alliance Training Programs									
Two programs per year		240,000			200,000			40,000	(WVU Law cost of Margaret/Comm. Time)
Equipment and Operations									
Filing fees		50,000	50,000						
General Use Funds (Supply & Equip)		108,000	20,000	-	24,000			64,000	
Travel, Training, Conferences		85,000	60,000	-				25,000	
Septic program funds		200,000	177,300	22,700					
Easement fees and costs		520,000	310,000	210,000					
Rent		161,350	36,250	14,700	96,000			14,400	
Overhead									
Internal Indirect Costs (31.6%)		1,329,364	-	240,128	413,960			675,276	(library use, utilities, admin time, etc) (includes School assumption of Powelton overhead)
Total		5,536,214	1,212,300	1,000,028	1,723,960			1,599,926	

Sustainable Development Law Clinic								
Preliminary Budget Estimates - All settlements								
Four-year Totals Detailed by year								
	Original Total	Total	Year-1	Year-2	Year-3	Year-4	WVU Law	
	4-Year Costs	From Detail	(AY 2011/12)	(AY 2012/13)	(AY 2013/14)	(AY 2014/15)	Contribution	(see note)
Personnel								
Faculty Directors	694,600							
Director of Center (Van Nostrand)		130,000	32,500	32,500	32,500	32,500	130,000	
Managing Attorney (Fetty)		287,500	62,500	75,000	75,000	75,000	28,750	
Full Time Faculty (Real Estate, Water)		97,500		32,500	32,500	32,500	97,500	
Full-time Clinical Faculty	837,400							
Lead Land Use Faculty		420,000	60,000	120,000	120,000	120,000	42,000	
2nd Land Use Faculty (Support)		225,000		75,000	75,000	75,000	22,500	
3rd Land Use Faculty (Support)		225,000		75,000	75,000	75,000	22,500	
WVU Faculty Advisors (15% of PM, AP, JM)	150,000	300,000	75,000	75,000	75,000	75,000	300,000	
Full-time staff	190,000							
Land-Use Planner		280,000	40,000	80,000	80,000	80,000		
Office Manager		172,000	24,000	49,000	49,000	50,000	86,000	
Part-time staff (Temps, coverage)	50,000	40,000	10,000	10,000	10,000	10,000	9,000	
Total Personnel	1,922,000	2,177,000	304,000	624,000	624,000	625,000	738,250	
Fringe Benefits (@25%)	480,500	544,250	76,000	156,000	156,000	156,250	184,563	
Consultants								
Individual Expert Professionals	200,000	200,000	50,000	50,000	50,000	50,000		
Graduate Fellowships								
Stipends	240,000	240,000	60,000	60,000	60,000	60,000		
Land Use Alliance Training Programs								
Two programs per year	240,000	240,000	60,000	60,000	60,000	60,000	40,000	
Equipment and Operations								
Filing fees	50,000	50,000	5,000	15,000	15,000	15,000		
General Use Funds (Supply & Equip)	108,000	108,000	20,000	25,000	30,000	33,000	64,000	
Travel, Training, Conferences	85,000	85,000	20,000	20,000	20,000	25,000	25,000	
Septic program funds	200,000	200,000	10,000	50,000	50,000	90,000		
Easement fees and costs	520,000	520,000	50,000	100,000	180,000	190,000		
Rent	161,350	161,350	30,000	40,000	40,000	51,350	14,400	
Overhead								
Internal Indirect Costs (31.6%)	1,329,364	1,430,090	216,460	379,200	406,060	428,370	675,276	
Total	5,536,214	5,955,690	901,460	1,579,200	1,691,060	1,783,970	1,741,489	

Note: The WVU contribution totals are embedded in the 4-year totals. It is separated just to detail the WVU contribution by line-item.

**WVU College of Law
Land Use and Sustainable Development Law Clinic**

Narrative Explanation of Preliminary Budget Estimates (All Settlements)

[References are to line numbers on the accompanying Excel Spreadsheet]

- Line 13. Director. Reference is to James M. Van Nostrand, Associate Professor and Director of the Center for Energy and Sustainable Development. The “WVU Law Contribution” reflects that about one fourth of Professor Van Nostrand’s time will be devoted to the activities of the Clinic. Inasmuch as his salary is paid by the law school, this portion of his salary represents a WVU Law Contribution.
- Line 14. Managing Attorney. This is the managing attorney position for the Clinic, which will be filled on or about September 1, 2011 by Nathan Fetty.
- Line 15. Full Time Faculty. The College of Law will hire an additional tenure-track faculty member, commencing in Fall 2012, specializing primarily in real estate and water law.
- Line 18. Lead Land Use Attorney. This is the one full-time clinical faculty member who will be hired to direct the Land Use Education and Leadership Training activities at the Clinic. This faculty member will have lead responsibility for leading the two 4-day intensive training programs to be offered each year for local government officials within the Kanawha, New and Gauley River watersheds.
- Lines 19-20. Land Use Faculty. Two additional full-time land use faculty will be hired by the Clinic. These attorneys will be expected to support both of the Clinic’s primary activities (*i.e.*, the work the Managing Attorney in providing transactional legal assistance, and the work of the Lead Land Use Attorney in providing leadership training on land use and sustainability issues).
- Line 22. Faculty Advisors. Several faculty members will have an advisory role with respect to the activities of the Clinic. While they will not be expected to have lead responsibility for projects at the Clinic, they will provide valuable advice and guidance for Clinic staff. Faculty members who can be expected to perform this advisory role include Professor Patrick McGinley, Professor Alison Peck, and Dean Joyce McConnell. The WVU Law Contribution calculation reflects the assumption that about 15 percent of their time could be devoted to their role as faculty advisors to the Clinic.
- Line 25. Land Use Planner. The Clinic will also hire an experienced land use planner, which will be a non-legal position. The land use planner can be expected to work with both the Managing Attorney and the Lead Land Use Attorney in supporting the Clinic’s activities.

- Line 26. Office Manager. Once the Clinic is fully staffed, there will be five full-time professionals, two graduate fellows, part-time staff, and several law students who are enrolled in the Clinic's programs. This will require hiring a full-time office manager to handle administrative, scheduling and office support duties.
- Line 28. Part-time Staff. Occasional staff support, as necessary, to provide regular coverage or to accommodate peak workloads.
- Line 32. Fringe Benefits. Health insurance, retirement plan, related benefits for the Clinic's full-time employees.
- Line 35. Expert Professionals. As contemplated in the Powellton settlement, experts will occasionally be retained to support the transactional work of the Clinic.
- Line 38. Graduate Fellowships. This reflects funding for stipends for 1- and 2-year fellowships for graduating WVU College of Law students to assist the clinical faculty in the work of the Clinic. The proposal contemplates 2 fellowship positions, with staggered 2-year terms to provide continuity in the fellowship program. The fellowship program will provide the training and experience for graduating law school students with respect to land use and sustainable development issues, thereby building essential capacity to continue this work following the four-year term of the proposal. With the anticipated implementation of an LLM program in Energy and Sustainable Development, these graduate fellows can be expected to complete their LLM degrees while working at the Clinic, and the stipend will be supplemented by tuition remission by the law school.
- Line 41. Land Use Training Programs. The education and training component of the Clinic's activities will provide valuable training to county and local government officials within the three watersheds on land use and sustainable development practices and policies. The education and leadership training will be structured along the lines of the Land Use Leadership Alliance (LULA) training program offered by the Land Use Law Center at Pace Law School in White Plains, New York, which leads the nation in educating local land use leaders through training programs in land use law and community decision-making. The proposal contemplates two 4-day intensive training programs each year for local government officials within the Kanawha, New and Gauley River watersheds. Each four-day program will be designed to meet the needs of its participants and their communities by focusing on both foundational and cutting-edge information related to protection of ground and surface water quality.
- Lines 44-48. Equipment and Operations. Self-explanatory.
- Line 49. Rent. Until the law school completes its anticipated expansion of the Law Center building (expected in January 2014), the Clinic will need to rent office space in

Morgantown at a location relatively convenient to the law school. The budget reflects the estimated rental costs for office space sufficient to accommodate five full-time professionals, an office manager, and graduate fellows.

Line 52. Internal Indirect Costs. This reflects the costs associated with the law school's administrative support of the Clinic, including library, IT and telecommunications services, utilities, and administrative staff time.

APPENDIX B

Permit	Outlet	Type ¹	Construction Completion Date
WV 006874	001 Tin Branch	BCR: under construction at inlet end to sedimentation pond to Tin Branch.	11/30/11
WV 006874	014 Scarlet Pond	BCR + wetlands beginning construction at upstream end of Scarlett Pond	10/15/2011
WV 096369	001 Beech Creek	WM: Stream diversion around sedimentation pond to blend with downstream dilute flow	Completed
WV 1004956	001 Left Fork @ Beech Creek	BCR proposed at Outlet 001 at intersection of Left Fork and Beech Creek. On-going in-situ bioremediation in valley fill	11/30/11
WV 1004956	015 Ethel Hollow	BR: Carbon + microbial augmentation of mine water stored in formation.	Completed

Abbreviations

BCR Biochemical Reactor
WM Water Management
BR Bioremediation

¹ Type of passive treatment being implemented by Arch