

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

HOMINY CREEK PRESERVATION ASSOCIATION, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
GREEN VALLEY COAL COMPANY,)	
Defendant.)	
)	

ORIGINAL COMPLAINT

Hominy Creek Preservation Association, Inc., (“HCPA”) brings this action to enforce effluent limitations that the Federal Water Pollution Control Act, 33 U.S.C. §§1251-1387 (“the Clean Water Act”) imposes on Green Valley Coal Company (“Green Valley”) with respect to a coal refuse storage structure located in and adjacent to Hominy Creek of the Gauley River in Nicholas County, West Virginia. Count One of this complaint seeks declaratory relief establishing the specific legal duties that the Clean Water Act imposes on Green Valley with respect to the structure at issue. Count Two seeks an order compelling Green Valley to comply with effluent limitations under the Clean Water Act by obtaining a permit to discharge pollutants from the coal refuse storage structure at points in addition to the outfalls currently designated in Green Valley’s permit under the National Pollution Discharge Elimination System (“NPDES”). Count Three seeks an order imposing appropriate civil penalties on Green Valley for regular, repeated, wilful, and knowing violations of the Clean Water Act.

JURISDICTION

1. This Court has jurisdiction of the case or controversy set forth in this complaint pursuant to 33 U.S.C. §1365(a) and 28 U.S.C. §§1331 and 2201.

2. On July 10, 2003, more than sixty days prior to filing this original complaint, HCPA gave notice in writing of Green Valley's violations of the Clean Water Act to (i) the Administrator of the United States Environmental Protection Agency ("EPA"), (ii) EPA's Regional Administrator for Region III, which includes West Virginia, (iii) the Secretary of the West Virginia Department of Environmental Protection, and (iv) Green Valley. HCPA attaches as Exhibit 1 to this complaint a copy of its July 10, 2003, notice of intent to sue Green Valley under the Clean Water Act.

3. Based upon inquiry on the date on which HCPA files this complaint, HCPA asserts that neither the Administrator of EPA nor the State of West Virginia has commenced a civil action in a court of the United States or a State to require Green Valley to comply with the effluent limitations which are the subject of this action.

VENUE

4. Venue is proper in this Court pursuant to 33 U.S.C. § 1365(c)(1) because the discharge source which is violating the effluent limitations at issue is located in this judicial district.

PARTIES

5. HCPA is a West Virginia corporation whose principal office is located in Quinwood, West Virginia, and whose mission is to serve the public interest as a grassroots organization dedicated to the improvement and preservation of Hominy Creek of the Gauley River.

6. Green Valley is a Virginia corporation.

FACTUAL ALLEGATIONS

7. At all times relevant to this complaint, Green Valley was and is a "person" within the meaning of 33 U.S.C. §1365(a).

8. At all times pertinent to this complaint, Colt Branch of Hominy Creek of the Gauley River was and is a navigable water of the United States.

9. Colt Branch is a tributary of Hominy Creek of the Gauley River.

10. At all times pertinent to this complaint Hominy Creek of the Gauley River was and is a navigable water of the United States.

11. At all times pertinent to this complaint, Hominy Creek of the Gauley River was and is a trout water of West Virginia.

12. Green Valley operates a coal processing plant and at least two coal refuse storage structures in or adjacent to Hominy Creek of the Gauley River in Nicholas County, West Virginia.

13. Green Valley's coal preparation plant is located on a portion of one of the two aforementioned coal refuse storage structures.

14. The coal refuse storage structure on which Green Valley's coal preparation plant is located is commonly known as "the Colt Branch Refuse Area."

15. Based upon information and belief, HCPA alleges that Westmoreland Coal Company ("Westmoreland") commenced construction of the Colt Branch Refuse Area in the 1940s and continued constructing it for several decades.

16. Based upon information and belief, HCPA alleges that Westmoreland constructed the Colt Branch Refuse Area in part by depositing coal refuse in the original streambed of Colt Branch.

17. Based upon information and belief, HCPA alleges that, during construction of the Colt Branch Refuse Area, Westmoreland relocated Colt Branch to a constructed streambed along the eastern edge of the valley which contained the original streambed of Colt Branch.

18. Based upon information and belief, HCPA alleges that, during construction of the Colt Branch Refuse Area, Westmoreland placed coal refuse adjacent to Hominy Creek at the southern boundary of the Colt Branch flood plain.

19. Based upon information and belief, HCPA alleges that, during construction of the Colt Branch Refuse Area, coal refuse that Westmoreland placed adjacent to Hominy Creek slid into and blocked a portion of the original streambed of Hominy Creek.

20. Based upon information and belief, HCPA alleges that, instead of removing the coal refuse that slid into and blocked a portion of the original streambed of Hominy Creek, Westmoreland relocated the affected portion of Hominy Creek to a constructed streambed approximately one hundred feet to the south of the original streambed.

21. Based upon information and belief, HCPA alleges that the boundaries of the Colt Branch Refuse Area have not changed in any manner material to the issues in this action since Westmoreland ceased placing coal refuse there in the late 1980s or early 1990s.

22. Based upon information and belief, HCPA alleges that, as the result of the method that Westmoreland employed to construct the Colt Branch Refuse Area, water now flows through the refuse storage area, beneath its surface but above the original ground. Throughout the remainder of this pleading, HCPA refers to such water as “subsurface flow through the Colt Branch Refuse Area.”

23. Based upon information and belief, HCPA alleges that subsurface flow through the Colt Branch Refuse Area moves initially to the buried original channel of Colt Branch and then flows generally in or with that channel toward Hominy Creek.

24. Based upon information and belief, HCPA alleges that Green Valley discharges a portion of the subsurface flow through the Colt Branch Refuse Area directly into Hominy Creek, below the normal level of the surface of Hominy Creek, downstream of the eastern intersection of the original and current channels of Hominy Creek.

25. Based upon information and belief, HCPA alleges that Green Valley discharges a separate portion of subsurface flow through the Colt Branch Refuse Area into Hominy Creek through multiple surface iron seeps and associated erosion channels located in the Colt Branch Refuse Area along the current north bank of Hominy Creek, above the normal level of that stream.

26. Based upon information and belief, HCPA alleges that subsurface flow through the Colt Branch Refuse Area contains pollutants, including but not limited to iron.

27. Based upon information and belief, HCPA alleges that Green Valley discharges the pollutants included in subsurface flow through the Colt Branch Refuse Area into Hominy Creek as described in Paragraphs 24 and 25 above.

28. Based upon information and belief, HCPA alleges that Green Valley has failed to obtain a permit issued pursuant to 33 U.S.C. § 1342 for any specific discharge of pollutants from the Colt Branch Refuse Area described in Paragraphs 24-27 above.

COUNT ONE

29. Green Valley's regular, recurring discharge of pollutants from the Colt Branch Refuse Area at points other than outfalls designated in the company's existing NPDES permit has violated, and continues or threatens to violate, the legal duty that 33 U.S.C. §1311 and 40 C.F.R. §122.1(b) impose on all persons to refrain from discharging pollutants into the waters of the United

States from a point source without a valid permit authorizing the person to discharge pollutants from that point source.

30. HCPA is entitled to a declaratory judgment that Green Valley has violated and currently is in violation of the Clean Water Act.

COUNT TWO

31. HCPA incorporates the allegations set forth in Paragraphs 1-30 as if they were fully set out here.

32. Green Valley's regular, recurring discharge of pollutants into waters of the United States from the Colt Branch Refuse Area entitles HCPA to an order compelling Green Valley to comply with the Clean Water Act.

COUNT THREE

33. HCPA incorporates the allegations set forth in Paragraphs 1-33 as if they were fully set out here.

34. In light of Green Valley's regular, recurring discharge of pollutants into waters of the United States from the Colt Branch Refuse Area at points other than those currently designated in the company's NPDES permit, the public interest underlying the Clean Water Act requires that the Court assess against Green Valley civil penalties pursuant to 33 U.S.C. §1319(d) for each day of the company's violation of the Clean Water Act since May 7, 2002.

PRAYER FOR RELIEF

WHEREFORE, HCPA requests that the Court grant the following relief:

- A. the declaratory judgment they describe in Count One of this complaint;
- B. the compliance order they describe in Count Two of this complaint;

- C. the civil penalty order they describe in Count Three of this complaint;
- D. an award of the costs of litigation, including reasonable attorney fees and expert witness fees which HCPA have incurred and may incur in the future in connection with their participation in this action; and
- E. such other and further relief against Green Valley as the Court may deem just and proper.

Respectfully submitted,

HOMINY CREEK PRESERVATION ASSOCIATION, INC.

s/ Derek O. Teaney

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