

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

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|-----------------------------|------------------------------|
| OHIO VALLEY ENVIRONMENTAL |) |
| COALITION, et al., |) |
| Plaintiffs, |) |
| v. |) Civil Action No. 3:08-0979 |
| |) |
| UNITED STATES ARMY CORPS OF |) |
| ENGINEERS, et al., |) |
| Defendants. |) |
| |) |

**PLAINTIFFS’ RESPONSE TO INTERVENOR-DEFENDANT FOLA COAL COMPANY,
LLC’S MOTION FOR RELIEF FROM NOVEMBER 24, 2009 ORDER**

Pending before the Court is Intervenor-Defendant Fola Coal Company, LLC’s Motion for Relief from November 24, 2009 Order. The specific relief that Intervenor-Defendant Fola Coal Company, LLC (“Fola”) seeks is for the Court to allow it “use of the valley fills on which Fola previously has been permitted to conduct mining activity.” Fola’s Motion at 10. In support of its motion, Fola asserts that, with regard to the fills whose continued use it seeks, “clearing and grubbing has been completed, the existing streambeds have been removed, the substrate has been collected and stockpiled, and SWROA structures have been constructed in the former stream channels within each of these valley fills.” *Id.* at 4. Furthermore, Fola’s counsel has represented to Plaintiffs’ counsel that, if permitted to continue using those fills, Fola can operate for 12 months or more. Plaintiffs understand that Fola intends to file an affidavit reflecting that 12-month period with the Court as soon as practicable.

Based on the foregoing, Plaintiffs do not oppose the relief that Fola seeks through its pending motion. Plaintiffs take this position with the expectation that Fola and the Army Corps will work with all due speed to resolve the defects in Fola’s § 404 permit and that Fola will not

need to return to this Court to ask for permission to disturb additional valleys.

Respectfully submitted,

/s/ Joseph M. Lovett
JOSEPH M. LOVETT
DEREK O. TEANEY
Appalachian Center for the
Economy and the Environment
P.O. Box 507
Lewisburg, WV 24901
(304) 645-9006
jlovett@appalachian-center.org

JAMES M. HECKER
Public Justice
1825 K Street, N.W. Suite 200
Washington, D.C. 20006
(202) 797-8600
jhecker@publicjustice.net

Counsel for the Plaintiffs

CERTIFICATE OF SERVICE

I, Joseph M. Lovett, hereby certify that, on December 23, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

Cynthia J. Morris
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 23986
Washington, DC 20026-3986

Ann D. Navaro
U. S. Army Corps Of Engineers
Great Lakes and Ohio River Division
P. O. Box 1159
Cincinnati, OH 45201

Robert McLusky
Jackson Kelly PLLC
1600 Laidley Tower
Post Office Box 553
Charleston, WV 25322

James Crockett
Allyn Turner
Spilman, Thomas & Battle, PLLC
Post Office Box 273
Charleston, WV 25321-0273

Terry Sammons
Sammons Law Offices, PLLC
P.O. Box 1747
Gilbert, West Virginia 25621

Edward P. Tiffey, PLLC
Post Office Box 3785
Charleston, West Virginia 25337-3785

W. Howard Sammons, II

Law Office of W. Howard Sammons II, PLLC
2768 Pennsylvania Avenue
Charleston, West Virginia 25302

Nicholas S. Preservati
Preservati Law Offices, PLLC
P. O. Box 1431
Charleston, West Virginia 25325

/s/ Joseph M. Lovett
JOSEPH M. LOVETT