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March 19, 2009

Boone County Circuit Court
Attention: Francine
200 State Street
Madison, WV 25130

RE: *Dotson, et al., v. Massey, et al.*
Civil Action No. 08-C-255

Dear Francine:

Enclosed for filing please find PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF TO STOP UNDERGROUND SLURRY INJECTIONS IN THE SETH PRENTER AREA. Please file in your usual manner.

If you have any questions, feel free to contact me at 1-800-775-1514.

Best regards,

Melissa L Burford
Paralegal

//mlb

Enclosures

cc: Plaintiffs

John R. Mitchell, Sr.
Randy Huffman, DEP
Black Castle Development Co.
Elk Run Coal Co., Inc.
Independence Coal Co., Inc.
Massey Energy Co.
Omar Mining Co.
Peabody Energy Corp.
Pine Ridge Coal Co., LLC
Federal Coal Co., Inc.
Judge William S. Thompson

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

**KERRLIE E. BISHOP, and
ALFREDA BISHOP**

CIVIL ACTION NO. 08-C-243

DAVID T. BRADLEY

CIVIL ACTION NO. 08-C-244

**DARRELL L. BUFFINGTON, SR., and
PAMELA E. HALSTEAD-BUFFINGTON,
Individually, and as Guardians of
STEPHEN C. MULLINS, a minor, and
LINDSAY MULLINS, a minor,**

CIVIL ACTION NO. 08-C-245

**JOHN H. BUFFINGTON,
DORIS BUFFINGTON, Individually, and as
Parents and Guardians of
JONATHAN BUFFINGTON, a minor**

CIVIL ACTION NO. 08-C-283

**DONALD TINCHER, JR.
JANICE DANIELLE HARPER, Individually,
and as Parents and Guardians of
CLAYTON SULLIVAN, a minor,
CODY SULLIVAN, a minor,
HALI CHYANN SULLIVAN, a minor, and
JOHN C. SULLIVAN, a minor**

CIVIL ACTION NO. 08-C-246

JANET BUFFINGTON

CIVIL ACTION NO. 08-C-247

**MARGARET BUFFINGTON, and
JOHN BUFFINGTON**

CIVIL ACTION NO. 08-C-248

**ANDROMADA DAMRON Individually,
and as Parent and Guardian of
DRAKE MOORE, a minor, and
ROGER DALE DAMRON, III, a minor, and
BARRY A ASHLEY**

CIVIL ACTION NO. 08-C-249

**STACY M. DEAL Individually,
and as Parent and Guardian of
JACOB I. DEAL, a minor, and
JOSEPH E. DEAL, a minor,**

CIVIL ACTION NO. 08-C-250

**PAMELA DONAHUE, as Administratrix of the
ESTATE OF JOHN A. DONAHUE, II**

CIVIL ACTION NO. 08-C-251

<p>PAMELA J. DONAHUE Individually, and as Parent and Guardian of JOHN Z. DONAHUE, a minor, MICHAEL FENSTERMACHER, Individually, and as Parent and Guardian of MICHAEL C. FENSTERMACHER, a minor,</p>	<p>CIVIL ACTION NO. 08-C-252</p>
<p>JAMIE M. DOTSON</p>	<p>CIVIL ACTION NO. 08-C-254</p>
<p>VIRGIL DOTSON, NORA DOTSON GEORGE DOTSON, SAMATHA DOTSON THOMAS, and CARRIE DOTSON</p>	<p>CIVIL ACTION NO. 08-C-255</p>
<p>LUTHER E. HALL, and PRISCILLA JANE HALL</p>	<p>CIVIL ACTION NO. 08-C-256</p>
<p>JENNIFER M. HALL-MASSEY, Administratrix of THE ESTATE OF RANDALL V. HALL, JR.</p>	<p>CIVIL ACTION NO. 08-C-257</p>
<p>TIFFANY HALSTEAD</p>	<p>CIVIL ACTION NO. 08-C-258</p>
<p>JOYCE L. HARPER, and LELAND J. FELTY</p>	<p>CIVIL ACTION NO. 08-C-259</p>
<p>GLENN R. HAYES, JR., and PATRICIA HAYES, Individually, and as Parents and Guardians of GLENN R. HAYES, III, a minor, and LIZA JOANN HAYES, a minor,</p>	<p>CIVIL ACTION NO. 08-C-260</p>
<p>CHESTER SANTONIA</p>	<p>CIVIL ACTION NO. 08-C-261</p>
<p>CHASITY WALL, Individually, and as Parent and Guardian of CHLOE BETH WALL, a minor, JERSEY MARIE WALL, a minor, and CADE RYAN WALL, a minor,</p>	<p>CIVIL ACTION NO. 08-C-262</p>
<p>NORVALL R. JENKINS, and SHARON G. JENKINS,</p>	<p>CIVIL ACTION NO. 08-C-263</p>
<p>AMANDA JO JENKINS, Individually, and as Parent and Guardian of</p>	

MICHAEL JENKINS, a minor

CIVIL ACTION NO. 08-C-264

RALPH E. LAMBERT, and
MARIA F. LAMBERT

CIVIL ACTION NO. 08-C-285

JEREMY S. LAMBERT, and
JENNIFER LAMBERT, Individually,
and as Parents and Guardians of
ALYSSA M. LAMBERT, a minor,

CIVIL ACTION NO. 08-C-265

CHARLES D. MASSEY,
JENNIFER M. HALL-MASSEY, Individually,
and as Parents and Guardians of
RYAN H. MASSEY, a minor, and
CLAY M. MASSEY, a minor

CIVIL ACTION NO. 08-C-266

JOHN B. MCCORMICK

CIVIL ACTION NO. 08-C-267

BETTY MCNEELY

CIVIL ACTION NO. 08-C-268

BARBARA J. SEBOK

CIVIL ACTION NO. 08-C-269

TERRY S. KEITH, and
BRADLEY E. KEITH, and
CHRISTINA KEITH, Individually,
and as Parents and Guardians of
CASSIE L. KEITH, a minor,
TRENT KEITH, a minor,
HOPE KEITH, a minor, and
ANA BETH KEITH, a minor

CIVIL ACTION NO. 08-C-270

HARRY L. SEBOK,
PATRICIA SEBOK, and
RYAN SEBOK

CIVIL ACTION NO. 08-C-271

ESHEL M. SMITH, and
PEGGY SUE SMITH, Individually,
and as Parents and Guardians of
HANNAH MARIE SMITH, a minor,
MARY SMITH, a minor

CIVIL ACTION NO. 08-C-272

RYAN S. SMITH

CIVIL ACTION NO. 08-C-273

PATSY STEELE, and
TRACY BURDETTE, Individually,

and as Parent and Guardian of
GAVIN BURDETTE, a minor

CIVIL ACTION NO. 08-C-274

JERRY A STEWART, and
MELBA STEWART

CIVIL ACTION NO. 08-C-275

JAMES E. BUTCHER, JR.
REBECCA A. BUTCHER,
JAMES A BUTCHER, and
MARTY J. BUTCHER

CIVIL ACTION NO. 08-C-286

CARRIE BUTCHER, Individually,
and as Parent and Guardian of
TRENT J. BUTCHER, a minor

CIVIL ACTION NO. 08-C-276

DEBRA THOMAS

CIVIL ACTION NO. 08-C-277

JOY E. OSBORNE, and
GINGER OSBORNE, Individually,
and as Parents and Guardians of
TORI THOMAS, a minor, and
HANNAH OSBORNE, a minor

CIVIL ACTION NO. 08-C-287

VIRGIL R. WEIKLE, and
KATHY WEIKLE

CIVIL ACTION NO. 08-C-278

RONNIE F. WHITTEN, and
SHARON WHITTEN

CIVIL ACTION NO. 08-C-279

AMANDA WHITTEN, Individually,
and as Parent and Guardian of
DEVON WITTEN, a minor,
ELIZA WHITTEN, a minor,
JUSTIN WHITTEN

CIVIL ACTION NO. 08-C-280

BARRY R. WILLIAMS

CIVIL ACTION NO. 08-C-284

KEVIN WILLIAMS, and
MICHELLE WILLIAMS, Individually,
and as Parents and Guardians of
HEATHER WILLIAMS, a minor,
SAMATHA WILLIAMS, a minor,
KELSEY WILLIAMS, a minor, and
MEGAN WILLIAMS, a minor

CIVIL ACTION NO. 08-C-281

MASSEY ENERGY CO., a Delaware Corp.,
OMAR MINING CO., a West Virginia Corp.,
INDEPENDENCE COAL CO., a Virginia Corp.,
ELK RUN COMPANY, INC., a West Virginia Corp., D/B/A
BLACK CASTLE MINING CO., a West Virginia Corp.,
Peabody ENERGY CORP., a Missouri Corp.,
Pine Ridge Coal Co., a Missouri Corp., and
FEDERAL COAL CO., a West Virginia Corp.
JOHN DOE CORPORATION

Defendants.

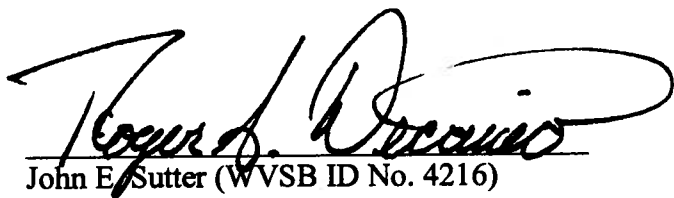
**PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF
TO STOP UNDERGROUND SLURRY INJECTIONS
IN THE SETH PRENTER AREA**

NOW INTO COURT, through the undersigned counsel, come the above named plaintiffs and pursuant to Rule 65 of the *West Virginia Rules of Civil Procedure*, hereby move the Court for the following injunctive relief supported by the attached memorandum and exhibits:

1. The defendants' injection of slurry into abandoned coal mines has rendered the Plaintiffs' water supply unsafe, undrinkable and unfit for human use as set forth in the attached memorandum.
2. Chief Judge Michael Thornsby has ordered "any injection well operations to cease" in Mingo County. The same should be done in the Seth and Prenter areas of Boone County, West Virginia to stop the negative health effects of not only Plaintiffs, but also rest of the public. See Page 6 of 18. **Plaintiffs' Exhibit 1.**
3. Plaintiffs respectfully request this Honorable Court to order the defendants to stop any further injection of slurry in the Seth and Prenter areas of Boone County, West Virginia;

Respectfully Submitted.

PLAINTIFF
By Counsel,

A handwritten signature in black ink, appearing to read "Roger A. Decanio", written over a horizontal line.

John E. Sutter (WVSB ID No. 4216)

Roger A. Decanio (WVSB ID No. 8176)

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STANDARD FOR INJUNCTIVE RELIEF

The standard in West Virginia for issuing a preliminary injunction is that a party seeking the temporary relief must demonstrate by a clear showing of a reasonable likelihood of the presence of irreparable harm, the absence of any other appropriate remedy at law and the necessity of a balancing of hardship test including: “(1) the likelihood of irreparable harm to plaintiff without the injunction; (2) the likelihood of irreparable harm to the defendant with an injunction; (3) the plaintiffs’ likelihood of success on the merits; and (4) the public interest.” *State by and Through McGraw v. Imperial Marketing*, 472 S.E.2d 792, 798 (1996) citing *Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass’n*, 393 S.E.2d 653, 662 (1990) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc., v. Bradley*, 756 F.2d 1048, 1054 (4th Cir. 1985).

In order to obtain a preliminary injunction, a party must demonstrate the presence of irreparable harm. In this instance, we have the contamination of the drinking water of a population. This activity must stop. This requires “the exercise of sound judicial discretion in view of all the circumstances of the particular case; regarding the nature of the of the controversy, the object for which the injunction is being sought, and the comparative hardship or convenience to the respective parties involved in the award or denial of the writ.” *Jefferson County Bd. of Educ.*, 393 S.E.2d at 662 citing *Donley v. Baker*, 164 S.E. 154 (1932). The hardship if slurry injection is permitted to continue is the further degradation of a population’s water supply and health.

MEMORANDUM IN SUPPORT OF INJUNCTIVE RELIEF

Simonton states that the residents of these communities have water that is a “threat to human health” and that the “impact from mining activities are present.” The available evidence strongly suggests that the drinking water contamination problem in this area is related to mining operations – especially impoundments and injection wells in the immediate vicinity and up-gradient area. See **Exhibit 2.**

WVSCMRA, West Virginia Code § 22-3-24(c), provides a rebuttable presumption that a mining operation caused damage to an owner's underground water supply if inspection determines contamination, diminution or damage to an owner's underground water supply exists. Experts from two respected West Virginia universities have completed such an inspection.

WHAT IS COAL SLURRY?

Before coal is sent to market it is washed to remove particles of slate, dirt, and trace elements found in the coal seam. The waste slurry is pumped underground into abandoned mines or pumped behind earthen dams into coal waste impoundments, some of which hold billions of gallons of sludge. The United States Environmental Protection Agency (hereinafter referred to as the "EPA") reported in one case that slurry injected underground "...contains harmful contaminants which are likely to enter the public water supply, and may present imminent and substantial endangerment to human health."¹ "... [S]lurry's path through the underground mine system is unpredictable. EPA concludes that it is likely that slurry will flow to points where water is being withdrawn from the mine by domestic users."² The harmful content in coal slurry comes from two sources: chemicals used in the processing facility and from the coal and rock itself. Because of this, the contaminants in coal slurry vary from place to place depending on the chemical make-up of the coal being processed and the chemicals the individual company used.

All the heavy metals found in coal are found in slurry. These elements are naturally occurring, but they remain safely locked away in the buried coal seam until they are exposed to air and water at which point they become mobile. Contaminants are then able to travel through the water supply. According to the US Geological Survey, "Coal contains toxic organic and inorganic compounds

¹ EPA Docket No. IV-85-UIC-101. "Determination and Consent Order in the Matter of Eastern Coal Corporations." United States Environmental Protection Agency Region IV. August 30, 1985. Online at http://www.sludgesafety.org/coal_slurry_inj.html.

² EPA Docket No. IV-85-UIC-101.

which, if mobilized into the environment, have the potential to impact human health and environmental quality.”³

Judge Thornsby clearly appreciated the toxic impact on the residents of Mingo County as clearly shown below. The same danger exists to the residents Seth and Prenter. The health effects below are effects that may be caused after long-term exposure at certain concentrations.

Heavy Metals***	Possible Health Effects**	Exceedance of Standards at Injection Sites	Exceedance of Standards in residential wells
Aluminum	Irritation of skin, upper respiratory tract. Damage to liver, kidneys, and lungs. Inflammation of the gastrointestinal tract. Skin or tooth discoloration.*	130% ⁽ⁱ⁾	Rawl
Arsenic	Cancer (liver, bladder, lung, kidney, and skin). Skin Damage, problems with circulatory systems, increased risk of cancer.* As has been recently linked to Alzheimer's.****	1,300% ⁽ⁱ⁾⁽ⁿ⁾	Rawl ⁽ⁱⁱⁱ⁾
Barium	Respiratory paralysis, muscle twitching or paralysis, may effect pacemaker or the heart muscle. Increase in Blood Pressure.*	Unknown level of exceedance ⁽ⁱⁱ⁾	Rawl ⁽ⁱⁱⁱ⁾
Beryllium	Lung tumors and lesions, weight loss. Intestinal lesions.*	800% ⁽ⁱ⁾	Rawl wells ⁽ⁱⁱⁱ⁾
Cadmium	Causes cancer, anemia, discoloration of teeth, & bone changes. Kidney Damage.*	280% ^{(i),(ii)}	Detected, not exceeded in Rawl wells ⁽ⁱⁱⁱ⁾
Chromium	Irritation to nasal cavity and upper respiratory tract, some compounds may cause cancer. Skin problems.*	500% ^{(i),(ii)}	Detected, not exceeded in Rawl wells ⁽ⁱⁱⁱ⁾
Copper	Irritation of upper respiratory tract, corneal ulcers and skin irritation, green hair. Short term: Gastrointestinal distress. Long term exposure: liver or kidney damage.*	Unknown level of exceedance ⁽ⁱⁱ⁾	
Iron	Decreased blood pressure, bloody diarrhea or coma, vomiting, mild lethargy.	Unknown level of exceedance ⁽ⁱⁱ⁾	Rawl ⁽ⁱⁱⁱ⁾
Lead	May cause cancer. Problems with joints, kidneys, and nervous system. Infertility and	Unknown level of exceedance ⁽ⁱⁱ⁾	Rawl wells ⁽ⁱⁱⁱ⁾

³ Orem, William H. *Coal Slurry: Geochemistry and Impacts on Human Health and Environmental Quality. (Power Point Presentation)*. United States Geological Survey. Viewed online March 9, 2009 at http://www.sludgesafety.org/misc/wm_orem_powerpoint/

	birth defects Delays in physical or mental development, deficits in attention span and learning ability. Kidney problems, high blood pressure.*		
Manganese	Loss of controlled movement; weakness, stiff muscles, and trembling hands, hallucinations, forgetfulness and nerve damage, Parkinson's, lung embolism and bronchitis.	3% ⁽ⁱ⁾⁽ⁱⁱ⁾	Rawl wells ⁽ⁱⁱⁱ⁾
Selenium	Hair loss, deformed nails; rashes and redness in skin; numbness in arms or legs. Fingernail loss; numb fingers or toes, circulatory problems*		Rawl wells ⁽ⁱⁱⁱ⁾
Sodium	Could interfere with blood pressure medication		Rawl wells ⁽ⁱⁱⁱ⁾
Zinc	Stomach cramps, nausea, vomiting, anemia, damage to the pancreas, and decreased levels of high-density lipoprotein (HDL) cholesterol.		Rawl wells ⁽ⁱⁱⁱ⁾

Table 1. Heavy Metals in Coal Slurry, Potential Health Effects, and Known Exceedances of Standards at Coal Company Underground Injection Sites and Residential Wells.

* Health information from United States Environmental Protection Agency, Office of Water, June 2003. Poster: *National Primary Drinking Water Standards*

** Health information from Hazardous Substances Databank of the National Library of Medicine online at <http://toxnet.nlm.nih.gov/cgi-bin/sis/search>, unless otherwise noted by (*).

*** List of heavy metals in coal slurry: Mine Safety and Health Administration

**** Gharibzadeh, Shahriar, "Arsenic Exposure May be a Risk Factor for Alzheimer's Disease."

i United States Environmental Protection Agency Region IV. Docket No. IV-85-UIC-101.

ii DEP Consent Order No. M-08-023.

iii Stout, Ben M, "Well Water Quality in the Vicinity of a Coal Slurry Impoundment Near Williamson, West Virginia," Wheeling Jesuit University. December 10, 2004.

Health Concerns

USGS researchers learned that liver cells exposed to coal slurry water have a higher mortality rate than liver cells exposed to clean drinking water.⁴ “...Water quality studies documented contaminated well water in WV and KY communities are consistent with coal slurry toxins.”⁵ At one site, “The injection operation caused waste water to be distributed over 1,020 acres of abandoned mine workings and into the surrounding groundwater system.”⁶ Community concerns in Rawl, Mingo County, where Judge Thornsby ordered a cessation of all underground injections, (See Exhibit 1) and Prenter, Boone County report similar health issues of skin rashes, cancer, gastrointestinal problems, kidney, liver and gallbladder disease. Hydrogen sulfide gas has been detected at high levels in houses in Rawl, and Prenter, as high as 30ppm. Hydrogen sulfide gas is highly corrosive. Personal safety detectors used by petrochemical workers are set to alarm at 5 to 10ppm. Hundreds of millions of gallons of coal slurry have been injected into abandoned mines near Rawl and Prenter. The injection sites in Prenter are within several miles of some of the Plaintiffs’ homes. Life expectancy in West Virginia counties is declining. Women, especially in southern West Virginia counties, are losing a decade of their lives compared to the national average.⁷

Independent scientific testing and analysis has tied toxic emissions by way of an exposure pathway from the defendants’ mining operations to the toxic contaminants found in plaintiffs’ water is undrinkable. As such, the plaintiffs will face irreparable harm, and under the

⁴ Bunnell, Joseph E. “Preliminary Toxicological Analysis of the Effect of Coal Slurry Impoundment Water on Human Liver Cells” United States Geological Survey. Open-File Report 2008-1143. Reston, VA. 2008.

⁵ Hendryx, Michael. “Hospitalization Patterns Associated with Appalachian Coal Mining.” Journal of Toxicology and Environmental Health. Taylor and Francis, 2008. ISSN: 1528-7394 print/ 1087-2620 online.

⁶ Spadaro, Jack. Report of Investigation Larry Brown Et. Al. v. Rawl Sales and Processing Company. Mingo County, West Virginia. Contact: PO Box 442, Hamlin, WV 25523.

⁷ “Early Deaths: West Virginians Have Some of the Shortest Life Expectancies in the United States.” West Virginians for Affordable Health Care. Based on a 2008 Report from Harvard Researchers. Online at www.wvahc.org.

balancing of hardships test, any obligations faced by the defendants to stop their toxic pollution and provide the plaintiffs with clean drinking water are clearly outweighed by the harm faced by plaintiffs.

Contamination, diminution or damage to the underground water supply did not exist prior to the injection of slurry in the late 1930's. See **letter to the editor from Emery E. Higginbotham. Exhibit 3.** This Court must follow the bold example set by the Court in Mingo County and order the cessation of further injection of slurry in underground abandoned coal mines. Yet as of the date of filing this motion, there is evidence that heavy metals are found in coal slurry. See **Exhibit No. 4.** This is what residents of Seth and Prenter have been consuming and been exposed to.

ALTERNATIVES TO COAL SLURRY

Many options are available to process coal without creating coal slurry. Existing coal processing plants can be paired with a filter press that will dry the slurry into filter cakes that can be disposed of in a lined landfill. The cost is slightly higher per ton for a conventional plant to operate with a filter press than without. This method has been used in West Virginia.

Other methods of coal processing do not involve water at all. Processes vary from using air and motion to electromagnetism to separate the coal without water and many have been around for decades. The initial capital expenditure on a dry plant is less than a wet plant and since dry processes use less energy and do away with the need for chemical input and large waste disposal areas, the operating cost is also lower.⁸ "Improved cleaning technology will make

⁸ Donnelly, Jim. "Potential Revival of Dry Cleaning of Coal." The Australian Coal Review. October 1999.

lower grade coals available as a US energy source. Dry cleaning methods should generate fewer environmental problems and require less energy than wet washing methods.”⁹

Electrostatic separation: Mineral matter is relatively conducting, does not retain an electric charge, and is thrown from the drum. Coal is relatively non-conducting and does retain a charge, and it adheres to the drum until being swept off with a brush. Research is being conducted to refine the process and make it more cost-effective.

<http://www.australiancoal.csiro.au/pdfs/Donnelly.pdf>

Magnetic Separators: The process is somewhat similar to electrostatic separation, using magnets rather than an electrical charge. Research suggests that some versions of magnetic separators will reduce costs significantly. The Rare Earth Magnetic Separator (REM) can handle 4-5 tons/hour, offers 13% lower capital cost, and 50% of the operating costs compared to the wet system for production of a fine coal product of equivalent energy level.

<http://www.australiancoal.csiro.au/pdfs/Donnelly.pdf>

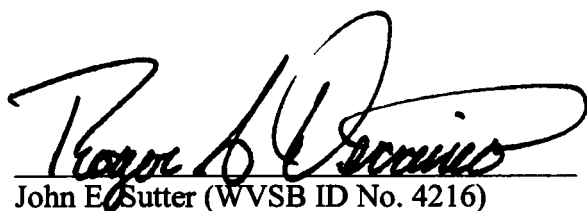
CONCLUSION

The coal industry has plausible options in which to process coal. The residents of Prenter and Seth do not have an alternative as it pertains to their health. Under the balancing of hardships test, the balance tips in favor of protecting the health and safety of the residents of Seth and Prenter. Accordingly, the Court should grant the motion to stop any underground injection of slurry in these areas.

WHEREFORE, Plaintiffs move this Court for an order prohibiting any further underground injections of slurry in the Seth and Prenter areas and such other relief as the Court

⁹ University of Arkansas, Published by US Department of Energy
<http://www.netl.doe.gov/publications/proceedings/99/99ucr/mazumder.pdf>

may deem appropriate in the premises including awarding the plaintiff their attorney fees incurred in obtaining such order.



**PLAINTIFFS
BY COUNSEL.**

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Roger A. Decanio (WVSB ID No. 8176)
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EXHIBIT

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1

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

IN RE: RAWL, LICK CREEK, SPRIGG
and MERRIMACK COMMUNITIES'
WATER REPLACEMENT CLAIMS

Civil Action Nos.: 05-C-374, 439-513, and
06-C-7-27

Chief Judge Michael Thörnshury

AMENDED ORDER GRANTING PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF
FOR TEMPORARY WATER SUPPLY

On the 8th day of June 2006 this matter comes before the Court pursuant to Plaintiffs' Motion for Immediate Temporary Water Supply. The Plaintiffs appeared by counsel, Kevin Thompson; Defendants Rawl Sales & Processing Co. and Massey Energy Company appeared by counsel, Robert C. McLusky and Daniel L. Stickler. The Court has considered the instant motion and responses thereto, the evidence adduced at the hearing, the relevant legal authorities, and the complete record in this case and makes the following order, to-wit:

FINDINGS OF FACT

1. On September 16, 2004 the plaintiff Larry Brown, filed the initial complaint¹ in this matter. The complaint alleged, *inter alia*, the coal mining and processing activities of the defendants has resulted in damage to the plaintiffs' water supply and has exposed the plaintiffs to toxic substances. The complaint further alleges defendants violated certain sections of the West Virginia Surface Coal Mining and Reclamation Act. The mining activities took place in an area nearby the residences of the plaintiffs, in the Rawl, Lick Creek, Sprigg, and Merrimack areas of Mingo County, West Virginia.
2. The plaintiffs contend the following actions by the defendants resulted in the alleged damage to the water supply: 1) Defendant Rawl Sales & Processing Co. ("Rawl Sales") used injection wells to dispose of waste from its processing activities, introducing coal sludge into the water supply; 2) Defendants' impoundment has resulted in increased head pressure in the plaintiffs' water wells; and 3) Defendant Massey Energy Company's ("Massey") strip mining activities in the area have fractured the sub-surface rock strata.

¹ Subsequent to the initial complaint, residents of the areas allegedly affected filed approximately one hundred additional complaints. The complaints assert the same causes of action.

- The underground water supply is now, as a result, contaminated with heavy metals such as lead, arsenic, manganese, barium, and magnesium.
3. On January 7, 2005 the plaintiffs filed their Plaintiffs' Emergency Motion for Preliminary Injunction. The Motion sought an order requiring defendants to provide an immediate and weekly emergency water supply to all residents of Rawl, Lick Creek, and Sprigg, to continue until a permanent supply can be made available. On April 27 and May 17, 2005 evidentiary hearings were held on the motion and substantial evidence was taken.
 4. On September 30, 2005 the Court entered its ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION. The Order made the following Findings of Fact, to-wit:
 - a. At the April 27 hearing Scott Simonton, Ph.D. testified he is an environmental engineer and is familiar with the circumstances surrounding this action. He reviewed the Department of Environmental Protection testing, a report prepared by Wheeling Jesuit University, conducted tests on his own, and concluded the water in the Rawl watershed is unsafe for drinking.
 - b. Dr. Simonton testified the defendants had used injection wells to inject coal sludge into mined-out areas of the Little Alma and Pond Creek coal seams. He stated he and members of his office conducted a search of the DEP records and could find no permits allowing a slurry injection system to be used in the Rawl area.
 - c. Dr. Simonton testified the Sprouse Creek Slurry Impoundment creates increased head pressure, forcing additional contaminants into the plaintiffs' water supply, while the strip mining processes – specifically the removal of overburden and associated blasting – causes fracturing of the sub-surface strata.
 - d. Dr. Simonton testified the arsenic levels in the water are the result of the slurry injection, and that the Sprouse Creek impoundment has the practical effect on the watershed of acting as a large injection well.
 - e. Dr. Simonton opined that in the Rawl area, a water well drawing from below the coal seams would pull contaminants to the well.
 - f. Dr. Simonton acknowledged all the named plaintiffs have stopped drinking the water, but stated that several individuals in the affected area continue to use the water to cook and shower, even though the contaminant heavy metals could be absorbed via

- the skin while bathing. Further, some non-named residents continue to drink the water.
- g. However, on cross-examination Dr. Simonton acknowledged certain water wells in the area do not perforate the Pond Creek seam. As of the April 27, 2005 hearing, Dr. Simonton had not determined all well depths and correlated the sampling results.
 - h. The Court admitted into evidence the Affidavit of Dr. Charles Wertz III, D.O., MPH. Dr. Wertz is an Assistant Clinical Professor of Occupational Medicine at West Virginia University who reviewed the data produced in Dr. Simonton's study of the well water in the Rawl area. Dr. Wertz opines the metals concentrations in the Rawl community water will contribute to neurological problems in children and an increased health risk to the community. Dr. Wertz states the contaminate metals may be absorbed by ingesting the water, as occurs in drinking or cooking with it, or by preparing food with it. Additional possible additional exposure may occur during bathing or showering.
 - i. The affidavit of Dawn Seaburger was admitted. It states DEP performed a water study on the area in 1995, and that all of the administrative appeals available to the plaintiffs were exhausted in 1995 as well.
 - j. Plaintiff, Larry Brown testified the water quality had been affected for a substantial period of time, with a marked decrease in quality following the use by defendants of the injection wells.
 - k. Mr. Brown stated he receives pallets of drinking water from the Mingo County Office of Emergency Services; he uses some personally and distributes the water throughout the community. He added that Mingo County provides additional drinking water in the form of a 50,000-gallon portable tank called a "water buffalo" during summer months.
 - l. Mr. Brown testified the water quality took a downturn in 1990-1991. He acknowledged he no longer drinks the water and does not have an immediate need, however he opined there is not enough of an outside supply to satisfy the needs of everyone in the community.
 - m. J. B Heflin, the general manager of the Williamson Public Service district testified as to his efforts to get a public water system to the Rawl community. Mr. Heflin

- testified there is currently a plan in place to supply Rawl, Lick Creek, Merrimac, and Sprigg with a public water line. Construction is expected to take one year and will commence in the summer of 2005. The project is funded by AML, based upon a finding that the damage to the water supply was caused by pre-1977 mining activities.
- n. Bill Davis, the director of the Mingo County Office of Emergency Services, testified the O.E.S. supplied bottled water to all residents who requested it, and that from May to October two water buffaloes are available for the area residents.
 - o. At the May 17, 2005 hearing Ronald Mullenex, a certified geologist and certified hydrologist testified as an expert in hydrogeology. Mr. Mullenex stated there was an impoundment prior to the Sprouse impoundment, which was used until the late 1970s. The Sprouse impoundment was constructed in the mid-1980s and injection operations were utilized in the interim. He stated the injection operation put slurry into mined out seams and not directly into the water table.
 - p. Mr. Mullenex opined the opinions of Mr. Simonton were not credible based upon the following: Metal concentrations in water wells were site specific and caused by a variety of reasons, not coal slurry; Mr. Simonton's theories about the impoundment concerning rainfall and evaporation rates are not consistent with the data; Mr. Simonton did not consider the underground drainage system – an elaborate French drain – installed in the dam face of the impoundment, and; the Alma seam would act as an additional drainage system for the impoundment, discharging into Sprouse creek. Mr. Mullenex opined further that the impoundment has no hydrogeological effect outside of the Sprouse Creek watershed.
 - q. Mr. Mullenex testified only two injection wells were ever sunk. One hit a pillar and was not used to inject the seam; the other was in the Alma seam to the east of Sprouse Creek and would not affect Sprigg or Merrimac.
 - r. Mr. Mullenex testified Sprigg and Merrimac were “up dip” and up gradient from the injection site and it was therefore not possible for any injected material to reach those areas. Additionally, the wells with higher metals concentrations were those that did not reach the Alma or Pond Creek seams, which is the opposite affect you would expect if the wells were impacted by slurry.

- s. Mr. Mullenex referred to several surface and subsurface maps of the affected areas, which were admitted into the record. Defendants' exhibit 8, a map of the pond Creek seam, clearly shows three injection wells. He then acknowledged there was at least one injection well on Lick Branch.
 - t. Mr. Mullenex opined the blasting associated with surface mining in the area would not be sufficient to cause significant subsurface fracturing. However, he based the opinion on general knowledge of blasting and acknowledged he did not review the site-specific blasting data.
 - u. Dr. Ronald Gots, M.D., Ph.D., a physician and toxicologist testified about his review of the Wheeling Jesuit report. He testified: only one of the sampled wells had arsenic levels that exceeded the EPA standards; selenium was found in excess in only one well and did not pose a hazard at that amount, and; the iron and manganese levels may cause unpleasant taste, but not pose any health risk. He acknowledged a small amount of lead in excess of recommended levels but opined it was not at a level to affect health.
 - v. Dr. Gots acknowledged the water would probably not have a pleasant taste yet opined it was safe to drink and use for other household purposes.
 - w. Dr. Simonton testified in rebuttal that the lack of fracturing testified to by Mr. Mullenex was improbable. Further, the radius of influence of the injection wells wasn't possible to calculate because there was no information available concerning the amount injected, at what rate it was injected, and the amount of subsurface fracturing. Additionally, Dr. Simonton noted that while the health effects of individual metals alone may not be significant, the synergistic effects of elevated levels of multiple contaminants were unknown.
5. The Order contained *inter alia* the following Conclusions of Law, to-wit:
- a. The Court FINDS there is evidence that the plaintiffs have suffered degradation in their underground water supply. However, the Court FINDS there is an availability of water from outside sources such as the Office of Emergency Services. Further, it appears public water will be provided in the immediate future.
 - b. The Court notes the record presents several different dates as to when the water quality began to degrade. The Court FINDS the determination of what entity or

- entities is responsible for the degraded water quality in the Rawl, Lick Creek, Merrimac, and Sprigg communities is a question of fact to be determined by a jury.
- c. Accordingly, the request for relief under W.Va. Code § 22-3-24 is **DENIED** based upon failure to meet the burden of proof. The Court now turns to the request to enjoin the use of injection wells for slurry disposal.
 - d. As to the nature of the case, based upon the foregoing and the complete record, the Court **FINDS** the water available to the plaintiffs via their underground wells is not potable. The Court additionally **FINDS** said water *may be* unsafe to use for drinking, cooking, bathing, or other household purposes.
 - e. The Court has reviewed the record and **FINDS** there is sufficient evidence available for a trier of fact to determine the operation of injection methods of disposing of coal slurry could have contributed to the degradation of the plaintiffs' underground water supply. However, the Court specifically does not rule on the ultimate issue and reserves this question for the jury in this case.

Additionally, the Court granted limited injunctive relief, requiring any ongoing injection well operations to cease.

6. On February 14, 2006 the plaintiffs filed the present Motion for Immediate Temporary Water Supply. The Motion asserts additional evidence is now available that further supports their claims that the Defendants are responsible for the degradation of the plaintiffs' water supply and accordingly, plaintiffs are entitled to temporary water replacement.
7. The matter came before the Court for a hearing on June 8, 2006. The plaintiffs appeared by counsel, Kevin Thompson; the Defendants appeared by counsel, Dan Stickler and Robert McLusky. The plaintiff entered into evidence Exhibit 12, a report prepared by Wheeling Jesuit, concerning a second round of testing of area water wells; Exhibit 4, a report dated January 1981 titled, "Groundwater and Geology Evaluation as Related to Proposed Shaft/Slope Construction as Pond Creek No. 1 Mine;" Exhibit 5, a report from Dow Chemical dated January 26, 1982 issued to Sprouse Creek Coal Company, and; Exhibit 6, a series of Monthly Monitoring Reports issued by Sprouse Creek Processing Co. in 1985 and 1986 to the West Virginia Department of Energy, Division of Reclamation, concerning the slurry injection rates and volumes for the period.

8. Carl Hrovatic, a geologist then with Geological Consulting Services, Inc.,² prepared the January 1981 report titled, "Groundwater and Geology Evaluation as Related to Proposed Shaft/Slope Construction as Pond Creek No. 1 Mine." The report was prepared for Rawl Sales and is dated January 22, 1981. It indicates the mining activities associated with the Pond Creek No. 1 Mine would result in "temporary disruption of the local groundwater regime."
9. The Monthly Monitoring Reports issued by Sprouse Creek Processing Co. contained in Exhibit 6 concern the amounts of slurry injected by Sprouse Creek, and show the following:
 - a. In July 1985, the average daily volume was 584,924.22 gallons with a total volume of 13,453,257 gallons, while the water depth in the Lick Creek shaft on July 25, 1985 indicates a depth of approximately 27.40 feet;
 - b. In August 1985, the average daily volume was 876,146.82 gallons with a total volume of 19,275,230 gallons, while the water depth in the Lick Creek shaft on August 13, 1985 indicates a depth of approximately 28.90 feet;
 - c. In October 1985 the average daily volume was 936,546.15 gallons with a total volume of 24,350,200 gallons, while the water depth in the Lick Creek shaft on October 29, 1985 indicates approximately 29.40 feet;
 - d. In December 1985 the average daily volume was 828,686 gallons with a total volume of 17,402,400 gallons, while the water depth in the Lick Creek shaft on December 20, 1985 indicates approximately 27.4 feet;
 - e. In April 1986 the average daily volume was 970,612 gallons with a total volume of 24,265,300 gallons, while the water depth in the Lick Creek shaft on April 9, 1985 indicates a depth of approximately 19.40 feet;
 - f. In May 1986 the average daily volume was 1,008,013 gallons with a total volume of 24,192,300 gallons, while the water depth in the Lick Creek shaft on April 9, 1985 indicates a depth of approximately 24.4 feet;
 - g. In September 1986 the average daily volume was 952,905 gallons with a total volume of 20,963,900 gallons, while the water depth in the Lick Creek shaft on September 25, 1985 indicates a depth of approximately 27.15 feet; and

² Ronald Mullenex, who testified at the May 17, 2005 hearing, is listed on the letterhead of the report.

- h. In October 1986 the average daily volume was 1,042,270 gallons with a total volume of 28,141,300 gallons, while the water depth in the Lick Creek shaft on October 31, 1986 indicates a depth of approximately 12.75 feet.
10. At the hearing, Dr. Simonton again testified concerning the additional testing that had taken place since the 2005 hearings, as well as the January 1981 report. He pointed out that the report of Mr. Hrovatic shows sandstone in the area is of medium permeability and that the other strata identified are permeable as well, save for a thin band of shale.
11. Dr. Simonton testified the Monitoring Reports lead him to conclude the slurry pumping created increased head pressure on the Pond Creek seam. In September and October 1986, 50 million gallons were pumped into the Pond Creek seam, yet the water level dropped nearly fifteen (15) feet. He opined the slurry was seeping into the permeable layers and that the defendants' mining activities adversely impacted the plaintiffs' water supply.
12. On cross, Dr. Simonton acknowledged the new testing indicates the presence of other contaminants, such as fecal coliform and uranium, which are not explained by the activities of the defendants. He further acknowledged iron is commonly found in underground water and that there is a hydrogen sulfide problem in areas of Greenbrier County where there are no mining activities.
13. Plaintiff, Larry Brown testified he has been coordinating distribution of bottled water for area residents.³ He stated water was available for \$4.90 per case from a local supplier and approximately \$2200 per week had been spent providing drinking water for the residents. This money came from a State grant and is now exhausted. He distributes water to approximately 250 households, with about two to three cases per week. This is even with the water buffalo in place. He stated if the Court were to grant the Motion and the defendants provided him with a supply of water, he would continue to distribute it to the area residents in a similar fashion.
14. Mr. Brown testified the water from the County supplied water buffalo is often unclean and not fit for drinking. Additionally, there are not enough containers to distribute to water from the buffalo. The water buffalo supply from Emergency Service is not available in the winter months.

³ Mr. Brown is a pastor for an area church, which is used as a community center.

15. J. B. Heflin testified concerning the Lick Creek water project. He stated the contract has been awarded and the contractor has been given notice to proceed. Construction on the project is scheduled to begin approximately two to four weeks from the date of the hearing. The contract calls for completion in 365 days from commencement. The pumping station is expected to arrive in four months and some residents should have access to water from the project by the end of the year. However, some residents may not have public water until next year and water will not be available via the water buffalo during the winter months of 2006-2007.
16. The Deposition of Eugene Kitts, who was an environmental engineer at Rawl Sales from 1981 to 1985, indicates Rawl Sales was injecting slurry as early as 1981, when he first arrived at the site. Kitts Depo. at 12. Mr. Kitts testified the impoundment that replaced the injection method was not constructed until the mid-1980s. *Id* at 7, 34.

CONCLUSIONS OF LAW

1. The instant Motion seeks temporary water replacement under W.Va. Code § 22-3-24, which provides in relevant part:
 - (b) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the surface-mining operation, unless waived by the owner.
 - (c) There is a rebuttable presumption that a mining operation caused damage to an owner's underground water supply if the inspector determines the following: (1) contamination, diminution or damage to an owner's underground water supply exists; and (2) a pre-blast survey was performed, consistent with the provisions of section thirteen-a of this article, on the owner's property including the underground water supply that indicated that contamination, diminution or damage to the underground water supply did not exist prior to the mining conducted at the mining operation. The operator conducting the mining operation shall: (1) provide an emergency drinking water supply within twenty-four hours; (2) provide a temporary water supply within seventy-two hours; (3) provide a permanent water supply within thirty days; and (4) pay all reasonable costs incurred by the owner in securing a water supply.
2. In its Order, the Court found the plaintiffs had suffered a degradation of their underground water supply. However, in denying the previous Motion, the Court noted two items. First, replacement water was available from public sources and public water lines were imminent. Second, "the determination of what entity or entities is responsible for the degraded water quality in the Rawl, Lick Creek, Merrimac, and Sprigg communities is a question of fact to be determined by a jury."

3. More than one year has passed since the earlier hearings and while the Lick Creek water project is now under contract, it will be, at an absolute minimum, four months before any water would be supplied by the project to any residents, and longer for other residents. The project coordinator, Mr. Heflin, stated the project should have water to some residents by the "end of the year," while the remainder will not get a permanent supply until next summer. The testimony of Mr. Brown indicates the Mingo County Office of Emergency Services supplied replacement water - water buffalo - is not adequate and at times, not potable. The State grant has been exhausted and residents are now forced to purchase replacement water out of their own pockets. Accordingly, the Court FINDS temporary water replacement is appropriate in this case.
4. As to the second finding, that the identity of the parties responsible for the degradation is now more evident. The testimony of Mr. Kitts indicates Rawl Sales used the injection method to dispose of coal lines from 1981 until at least 1985. The DOE reports in exhibit 6 indicate an average monthly injection of 21.5 million gallons of slurry. The records further show periods where the water level remained relatively static while large quantities of slurry were being pumped into the ground.
5. The Court FINDS that while there is still an issue of fact for the jury on this matter, the plaintiffs have presented additional evidence sufficient to support their Motion and request for water replacement.
6. In substance, the instant Motion is one for injunctive relief. As the Court noted in its September 30, 2005 Order, "generally, '[t]he granting or refusal of an injunction, whether mandatory or preventive, calls for the exercise of sound judicial discretion in view of all the circumstances of the particular case; regard being had to the nature of the controversy, the object for which the injunction is being sought, and the comparative hardship or convenience to the respective parties involved in the award or denial of the writ.' Syl. pt. 4, *State ex rel. Donley v. Baker*, 112 W.Va. 263, 164 S.E. 154 (1932)."
7. "Under the balance of hardship test the [lower] court must consider, in 'flexible interplay,' the following four factors in determining whether to issue a preliminary injunction: (1) the likelihood of irreparable harm to the plaintiff without the injunction; (2) the likelihood of harm to the defendant with an injunction; (3) the plaintiff's likelihood of success on the merits; and (4) the public interest." *Jefferson County Bd. of Educ. v.*

- Jefferson County Educ. Ass'n*, 183 W.Va. 15, 24, 393 S.E.2d 653, 662 (1990) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley*, 756 F.2d 1048, 1054 (4th Cir.1985) (citation omitted)).
8. The plaintiffs who are seeking water replacement are now without access to potable water for drinking and cooking purposes. There is substantial testimony that the water is not safe to drink, and relying on it for drinking purposes would pose a significant health risk. The plaintiffs are currently forced to resort to outside sources to secure safe drinking water in adequate supply, which is a great inconvenience to them. The Court FINDS the time and effort the plaintiffs are expending to secure a supply of this fundamental staple of life is sufficient to qualify as irreparable harm under the first prong of the *Jefferson County Board of Education* test, *Id.*
 9. The second consideration is the likelihood of harm to the defendants without an injunction. The testimony of Mr. Brown indicates it was costing approximately \$2200 per week to supply 250 families with replacement water. The instant Motion only implicates eighty (80) families, or approximately 30% of the families Mr. Brown was serving. This extrapolates to an approximate weekly expense of \$700 to the defendants. Massey Energy Company had net income for the three-month period ending March 31, 2006 of \$5,611,000.⁴ Considering the financial position of the defendant, Massey Energy Company, the Court FINDS the likelihood of harm to the defendants if the requested relief is granted is *de minimus*.
 10. As to the plaintiffs' likelihood of success on the merits, the Court has already noted there is substantial evidence available that could lead a jury to conclude the defendants are responsible for the bad water in the Rawl area. Certainly, the testimony of Mr. Kitts that Rawl Sales used the injection method of disposing of coal fines for several years, as well as the Department of Energy reports, provide a greater factual basis in support of the plaintiffs' claims than were available to the Court when this issue was previously litigated. The Court FINDS the likelihood of success on the merits is sufficient to warrant the injunctive relief.
 11. The final consideration is the public interest. For decades, the plaintiffs in this matter relied on their underground water supply for all their water needs. They cannot do so

⁴ <http://www.sec.gov/Archives/edgar/data/37748/000119312506107538/d10q.htm> (last checked June 21, 2006).

any more. This has precipitated a public water project to supply them with this necessity of life. While the plaintiffs have waited for the project to begin, they have had to rely on water supplies from the Mingo County Office of Emergency Services. Clearly, the public interest in this matter is for the party or parties responsible for the degradation of the water supply to contribute to the remediation of the problem. The Court is not passing judgment on the ultimate issue of who is responsible for this degradation, but as discussed above, the evidence tends to implicate the defendants. Therefore, the Court **FINDS** the public interest in this matter favors granting the requested injunctive relief.

12. Based upon the foregoing, the instant Motion is **GRANTED**.
13. Defendants, Rawl Sales & Processing Co. and Massey Energy Company, are **DIRECTED** to supply temporary replacement water supplies to the following parties:
- a. Billy Sammons Jr., Deborah Kaye Sammons and their minor children, Jordan Sammons and Brittany Sammons, RR 2, Lick Creek Road, Box 362, Williamson, West Virginia.
 - b. Larry J. Brown and Brenda Brown, Rt. 2, Box 185, Rawl, West Virginia.
 - c. Ira White, Cathy White and their children Nicole White, Amanda White and Adam White, PO Box 314, Rawl, West Virginia.
 - d. Alice Yates and Frank Coleman, P.O. Box 277, Rawl, West Virginia.
 - e. David Joe Mollett, Elmer Mollet, and Mekia Mollet, RR2, Box 412, Williamson, West Virginia.
 - f. Wanda Mollet and her minor child, Jacqueline Mollet, Rt. 2, Box 405, Williamson, West Virginia.
 - g. Steve Ball, P.O. Box 162, Rawl, West Virginia.
 - h. Donnetta Blankenship, Orville Blankenship and their minor children, Christina Blankenship, Amy Runyon and Josh Runyon, PO Box 147, Rawl, West Virginia.
 - i. Lisa Blankenship, PO Box 147, Rawl, West Virginia.
 - j. Ruby Blankenship, PO Box 147, Rawl, West Virginia.
 - k. Carmelita Brown and Ernest Brown, PO Box 178, Rawl, West Virginia.
 - l. Paul David Brown and Kathelene Brown, Rt. 2, PO Box 393, Williamson, West Virginia.
 - m. Pearl Brown and Paul J. Brown, RR 2, Box 394, Williamson, West Virginia.

- n. Larry Brown, Jr., Rt. 2, Box 185, Rawl, West Virginia.
- o. Christopher S. Brown, PO Box 178, Rawl, West Virginia.
- p. Lucy Chafin and Roy Franklin Chafin, PO Box 223, Rawl, West Virginia.
- q. David Dillon and Mary Elizabeth Dillon, PO Box 27, Rawl, West Virginia.
- r. Russell and Ella Mae Elkins, along with their children Tammy Elkins, Timothy Elkins, Miranda Elkins and Hanna Elkins, Rt. 2, Box 28, Rawl, West Virginia.
- s. Thelma Elkins, Rita Elkins, and Steven Elkins, PO Box 75, Rawl, West Virginia.
- t. David Evans and Mazola Mae Evans, Rt. 2, Box 404, Lick Creek, West Virginia.
- u. Ira Evans and Glenna Faye Evans, Rt. 2, Box 404, Lick Creek, West Virginia.
- v. David France, PO Box 125, Williamson, West Virginia.
- w. Lisa Kay Francis, along with her minor children, Ethan and LaRisa, 48 North Sunset Blvd., Williamson, West Virginia, but only if is she actually residing in the impacted area.
- x. Francis D. Fuller and Franklin D. Fuller, RR 2, Box 351, Williamson, West Virginia.
- y. Kathy Hardin, P.O. Box 277, Rt. 49, Williamson, West Virginia.
- z. Billy Hatfield and his children Timmy and Jimmy Hatfield, PO Box 175, Rawl, West Virginia.
- aa. Brandi Hensley Baisden and James Hensley, PO Box 35, Rawl, West Virginia.
- bb. Rosemary and James Justice, Rt. 2, Box 352, Williamson, West Virginia.
- cc. David B. McCoy and Judy McCoy, PO Box 133, Williamson, West Virginia.
- dd. Randy S. Meadows lives, PO Box 164, Rawl, West Virginia.
- ee. Mary Margaret Milam and Jimmy Milam, their son Christopher Brian Milam and his son Christopher Brian Milam, Jr., P.O. Box 41, Rawl, West Virginia.
- ff. Tammy Mosley and Tim Mosley live, PO Box 28, Rawl, West Virginia.
- gg. Deborah Murphy and Kermit Murphy, and their son Kermit Murphy, PO Box 304, Rawl, West Virginia.
- hh. Carrie Ann Prater, PO Box 41, Rawl, West Virginia.
- ii. Thelma Prater, PO Box 186, Rawl, West Virginia.
- jj. Lassie Prater, PO Box 204, Rawl, West Virginia.
- kk. Maude Rice, RR 2, Box 350, Williamson, West Virginia.

- ll. Rebecca E. Roberts and Chester Roberts, and their son Chett Roberts, PO Box 119, Rawl, West Virginia.
- mm. Oscar Roberts, PO Box 186, Rawl, West Virginia.
- nn. Margie Robinette and John Robinette, along with their children, Jonathan Robinette and Steven Robinette, Rt. 2, Box 403, Williamson, West Virginia.
- oo. Allen Schwalb and his wife and children, 585 Lick Creek, Williamson, West Virginia.
- pp. Jennifer Spence and her son, Joshua Spence, RR2, Box 406, Williamson, West Virginia.
- qq. Kenneth Stroud and his children Christopher Chase Stroud and Kenneth Aaron Stroud, Box 138, Rawl, West Virginia.
- rr. Janice Wallen and her son, Dock Wallen and Dock's son, Timothy Wallen, RR2, Box 353, Williamson, West Virginia.
- ss. Eddie M. Dillon and Anita Dillon, along with their children, Megan Dillon and Eric Dillon, PO Box 156, Rawl, West Virginia.
- tt. Amanda Renee Hicks, Christopher Lee Hicks and Ricky Hicks, PO Box 56, Rawl, West Virginia.
- uu. Rodney D. Jude and Annette Jude and their grandchildren, Noah and Melissa, 29 Caney Branch, Williamson, West Virginia.
- vv. Estalene Lester and Leah Lester, 21 Caney Branch, Williamson, West Virginia.
- ww. Mary Sue Meadows and Randy Meadows and their grandchildren Austin Meadows, Joseph Meadows and Daniel Meadows, PO Box 164, Rawl, West Virginia.
- xx. Randy Dewayne Meadows and Tracie Meadows and their child, Marissa Meadows, PO Box 174, Rawl, West Virginia.
- yy. Jessie Meadows, PO Box 164, Rawl, West Virginia.
- zz. Connie Mullins and Jerry Mullins, along with Terry Mullins, Laura Mullins and Shirley Mullins, Rt. 2, Box 373, Williamson, West Virginia.
- aaa. Nalo Jean Roberts, Rt. 2, Box 414, Williamson, West Virginia.
- bbb. Hester Runyon and Arnold Runyon, PO Box 37, Rawl, West Virginia.

- ccc. Michael Lester, Michael Shane Lester and Jennifer Baldrige, 37 Caney Branch Road, Williamson, West Virginia.
- ddd. Keith Staten and Cecilia Staten, PO Box 300, Rawl, West Virginia.
- eee. James "Bo" Scott and his family, PO Box 66, Rawl, West Virginia.
- fff. Zella Pigman, Juanita Pigman and William Pigman, PO Box 259, Rawl, West Virginia.
- ggg. Eugene Cline, PO Box 142, Rawl, West Virginia.
- hhh. Darlene Hicks, PO Box 56, Rawl, West Virginia.
- iii. Richard Lewis, PO Box 237, Rawl, West Virginia.
- jjj. Sheila Rena Maynard and her children, Phillip Bryant Coleman and Arleen Faye Coleman, PO Box 225, Rawl, West Virginia.
- kkk. Melvin Charles McCoy and Madonna McCoy and their children Amanda Dawn McCoy, Melvin Lee McCoy and David Michael McCoy, PO Box 108, Rawl, West Virginia.
- lll. Debra Ann Miller, PO Box 235, Rawl, West Virginia.
- mmm. Peggy Sue Miller and Billy Ray Miller, PO Box 235, Rawl, West Virginia.
- nnn. Dorothy P. Pope, PO Box 113, Rawl, West Virginia.
- ooo. Roscoe and Ruth White and their child, Vicky Lynn White, PO Box 14, Rawl, West Virginia.
- ppp. Norma Jean Hensley Clark and Robert James Clark, Jr. and their son Joshua James Clark, PO Box 123, Rawl, West Virginia.
- qqq. Daniel Wade Hensley, PO Box 123, Rawl, West Virginia.
- rrr. Anita Sue Stevens Dillon, Eddie Michael Dillon, Megan Michelle Dillon and Eric Matthew Dillon, PO Box 156, Rawl, West Virginia.
- sss. April Russell, PO Box 137, Rawl, West Virginia.
- ttt. Vernal Blankenship, Gary Blankenship, William Blankenship, Jimmy Blankenship, Dora Blankenship and Jack Blankenship, PO Box 63, Rawl, West Virginia.
- uuu. Peggy Gauze, Louie Gauze & Scott Gauze, PO Box 84, Rawl, West Virginia.
- vvv. Serna Clemens, PO Box 63, Rawl, West Virginia.
- www. Derek Dotson, PO Box 63, Rawl, West Virginia.

- xxx. Anna Joyce Hammond Ball, RR2, Box 395, Williamson, West Virginia.
- yyy. Bernard Yates and Betty Yates, PO Box 88, Rawl, West Virginia.
- zzz. Ralph Blankenship and Bessie Sue Blankenship, PO Box 153, Rawl, West Virginia.
- aaaa. Alvin Blankenship, Rita Blankenship, Dora Ellen Blankenship, Jamie Blankenship and Tommy Blankenship, PO Box 2057, Williamson, West Virginia.
- bbbb. Arnold Eugene Whitt, Kristie Whitt, Keagun Whitt and Brenden Whitt, PO Box 39, Rawl, West Virginia.
14. There shall be no obligation to deliver water to anyone who no longer resides in the impacted area.
15. The Defendant shall provide one case of bottled water per person in each household, per week to each household until further Order of this Court. The Defendant's obligation to provide replacement water shall immediately terminate to any household upon their receiving public water. The water buffalo may also help provide for the water needs. The bottled water may be delivered to a central location designated by the Defendant and distribution coordinated by Larry Brown.
16. Larry Brown is **DIRECTED** to document the distribution of the bottled water to the above named parties. The documentation shall consist of the name(s) of the recipient(s) of the water, the date delivered, and the quantity delivered. Mr. Brown shall provide a copy of this documentation to Plaintiffs' counsel, Kevin Thompson, each week, and Mr. Thompson shall provide a copy to the Defendant.
17. If any party becomes aware of any waste or other issue that affects distribution of the replacement water supply, said party shall bring the issue to the immediate attention of the Court.
18. The Defendant's obligation to provide water replacement to a named party shall terminate without further order of the Court as the party receives public water.
19. The replacement water supply is for the household use of the above named parties only. The bottled water shall not be redistributed to any person outside the affected area. The bottled water may not be resold to any third party. A named party that violates this provision may be subject to sanctions and other discipline of the Court.

20. W.Va.Code § 53-5-9 provides, "An injunction (except in the case of any personal representative, or other person from whom, in the opinion of the court or judge awarding the same, it may be improper to require bond) shall not take effect until bond be given in such penalty as the court or judge awarding it may direct, with condition to pay the judgment or decree (proceedings on which are enjoined) and all such costs as may be awarded against the party obtaining the injunction, and also such damages as shall be incurred or sustained by the person enjoined, in case the injunction be dissolved, and with a further condition, if a forthcoming bond has been given under such judgment or decree, to indemnify and save harmless the sureties in such forthcoming bond and their representatives against all loss or damages in consequence of such suretyship; or, if the injunction be not to proceedings on a judgment or decree, with such condition as such court or judge may prescribe. The bond shall be given before the clerk of the court in which such judgment or decree is, and in other cases before the clerk of the court in which the suit is wherein the injunction is awarded. If the bond be not given before the summons is issued, the clerk shall indorse thereon that the injunction is not to take effect until the bond is given, and the clerk who afterwards takes the bond shall indorse on the summons that it is given."
21. W.Va.R.Civ.P. 65 (c) provides, "No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court in its discretion deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the State of West Virginia and its political subdivisions or of an officer or agency thereof."
22. Accordingly, the Plaintiffs are **DIRECTED** to **POST BOND** in the amount of fifty thousand dollars (\$50,000.00).

JUDGMENT

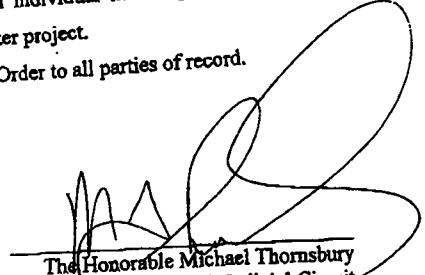
Wherefore, based upon the foregoing the Court does hereby **ORDER**, **ADJUDGE**, and **DECREE** the instant Plaintiffs' Motion for Immediate Temporary Water Supply is **GRANTED**. The defendants are **DIRECTED** to supply a replacement supply of potable water to all named plaintiffs herein. The defendants are further **DIRECTED** to coordinate said water replacement

efforts with plaintiff, Larry Brown. Plaintiff's BOND is SET in the amount of fifty thousand dollars (\$50,000.00).

This Order shall remain in effect with respect to each individual named plaintiff until said plaintiff(s) receives public water from the Lick Creek water project.

The Clerk is DIRECTED to send attested copies of this Order to all parties of record.

ENTERED this the 27th day of July 2006.



The Honorable Michael Thornsby
Chief Judge, 30th Judicial Circuit

A COPY TESTE
Shant Reed
CIRCUIT CLERK, MINGO COUNTY, W.VA.

SMITH AND THOMPSON

FACSIMILE TRANSMITTAL SHEET

TO:	Van Bunch	FROM:	Kathleen Thaler Thompson
COMPANY:	Bonnet Fairbourn	DATE:	8/1/2006
FAX NUMBER:	602-274-1199	TOTAL NO. OF PAGES INCLUDING COVER:	21
PHONE NUMBER:	602-274-1100	SENDER'S REFERENCE NUMBER:	
RE:	Rawl	YOUR REFERENCE NUMBER:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Van,

Kevin received this in today's mail. I have relayed the contents to Kevin but he does not have access to a fax, so I have been unable to provide him a copy. I think you'll be pleased. I know Kevin wants to talk with you...e-mail or calling the hotel in Williamson, Room 309 (as usual) is the best way to reach him. Best of luck in your up coming trial.

Kathleen

(CLICK HERE AND TYPE RETURN ADDRESS)

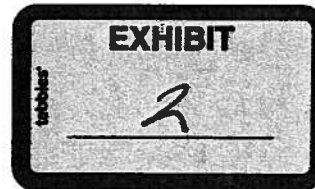


HC 83 Box 121
Sissonville, WV 25320
E-mail: ssimonton@cebridge.net

Business Phone: 304.988.2004
Cellular Phone: 304.552.7488
Ashby-TuckerEnvironmental.com

December 30, 2008

Roger Decanio
The Sutter Law Firm, PLLC
1598 Kanawha Boulevard, East
Charleston, WV 25311



RE: Well Sampling, Seth/Prenter

Dear Mr. Decanio:

This letter concerns the potential impacts to drinking water wells in the Boone County, WV areas of Seth and Prenter. On October 29, 2008 I had the opportunity to visit the more of the homes in the subject area. As during previous sampling, I also took the opportunity to question the residents about the drinking water in their homes. While this visit was limited in scope, based on these interviews, my previous and continued sampling, and the sampling work of Ben Stout (Wheeling-Jesuit University), it appears that these wells have been impacted by nearby mining activities.

As during the August sampling event, interviews with residence indicated a deterioration of water quality over the last few years. All reported taste, appearance and odor changes over that period, as well as the smell of "rotten eggs". In all instances I did smell hydrogen sulfide gas in the home and/or the water sample.

Water wells in the area have historically been the sole source of drinking, cooking and bathing water. Recently, bottled water has been used for drinking and cooking in some homes.

Samples were collected from either the well pressure tank or, if the pressure tank was not accessible, from the tap. All samples were collected prior to treatment (softeners, etc.) if applicable. Odor and color was noted in each sample. Samples were analyzed for inorganic contaminants only. Contaminant levels were above applicable drinking water standards in many instances, including those standards for iron, barium, arsenic, manganese and lead. The presence of lead and arsenic is particularly troubling, as the toxicity of these contaminants has lead USEPA to establish contaminant level goals of zero for both, indicating that there is no safe level of exposure.

Generally, sampling has included those inorganic constituents associated with coal mining as well as those previously detected, especially those detected at levels of concern. In short, as with any sampling event, constituents to be analyzed had to be limited. There are undoubtedly other contaminants in the aquifer that were not analyzed for, such as organic contaminants – the main purpose of this limited sampling event and site visit was to determine if a widespread impact to

the aquifer is likely to exist and to determine some of the toxics to which residents were exposed. The sampling events and site visits do indicate that impacts from mining activities are present, and a threat to human health. Additionally, the presence of nearby surface and underground mining, as well as slurry impoundments and underground slurry injection, indicates the source of these contaminants. Constituents and analytical results can be found in accompanying reports.

In addition to the concern of contaminants in the water supply, hydrogen sulfide gas is being generated in the groundwater and is making its way into these homes. As previously explained, the gas is formed through the reduction of sulfate, present in the areas groundwater, indicative of the local mining activities. Naturally occurring sulfate and iron reducing bacteria reduce the sulfate to sulfide in their normal metabolic activities. This creates hydrogen sulfide, a very toxic and pungent gas. Additionally, the presence of sulfide indicates strongly reducing conditions in and around the wells. This will have a tremendous impact on the form and availability of the contaminants in the well by changing their redox states. This in turn will effect solubility, mobility and toxicity of these metals. As conditions change, for example when residents use bleach to temporarily reduce the sulfide odor, redox conditions will change again. These changing redox conditions will have a huge effect of the variability of contaminant concentrations in the well water, as well as the mobility and toxicity of those contaminants.

Slurry Injection/Slurry Impoundments

There is no better way to move contaminants from a solid, such as rock, into water as a dissolved or suspended constituent than to grind it up to a fine particle size and mix it with the water. This is what occurs when coal slurry is produced. In addition to the fines from waste rock and coal, man-made organic contaminants are also introduced into the slurry.

Once in a slurry, contaminants such as iron, manganese, arsenic, lead and sulfate dissolve from the parent material, either coal or waste rock, and dissolve or are suspended in the liquid water, and other liquids, which create the slurry. This process is controlled by various factors, including solubility, temperature and contact time, but all contaminants will absolutely move from the solid to the liquid, dissolved phase in varying degrees, and many will be suspended as fine solids in the solution. Additionally, natural waters coming in contact with the slurry will also be contaminated.

In this case, this slurry was disposed of via injection wells over several years, and may be continuing. Additionally, slurry impoundments are in use in the vicinity, and are certainly contributing to groundwater contamination. The injection wells deposited the slurry in abandoned underground mines in the subject area. Slurry injection as a waste containment tool relies on the slurry remaining in the underground workings where it is placed, but that can only occur if the mine walls, floors and roofs are perfectly intact. However, the Appalachian Plateau, especially in coal-bearing strata and including the Seth/Prenter area, is known for having high secondary permeability because of fractures, joints, bedding planes etc. Mining further enhances these features, as well as contributing its own, especially cracks. In this case, underground mining has occurred in several seams, and surface mining is currently being conducted in the area. Secondary permeability will therefore be much higher than primary permeability throughout the subject area, and extend well below the lowest mine works. Therefore slurry, as well as the now-contaminated water, will migrate away from the mine works into which it was injected, into the surrounding strata and aquifers, and into nearby pumping wells. Undoubtedly groundwater has been negatively impacted as a result of these activities in the subject area.

Migration

The area used for this waste disposal has been heavily mined. Boreholes have been scattered about the region for slurry injection, but also for exploration of oil, gas and coal. Boreholes alone would hydraulically connect upper and lower strata in the area. However, the effect of mining on vertical hydraulic conductivity is even more pronounced.

Mining exaggerates existing cracks and fractures in strata as well as creates new ones, creating secondary porosity that is much greater than the primary porosity of the undisturbed, native formations. Post-mining, roof falls in the mines create subsidence cracks, which can extend vertically 100 to 300 feet or more. Cracks and fractures from underground mining would create a network of preferential pathways extending from well above the highest mined seams to well below the lowest mined seam seam, and would be especially dense between the mined areas. Connection between seams is a reasonable certainty.

Given just natural gradients in the area, slurry and contaminated water would move generally toward the subject communities. However, to compound this movement and to increase that gradient and flow rate, the injection process creates an injection well mound, forcing water and slurry away from the injection point and increasing the hydraulic gradient. In addition, as the community water supply in the area consists of many wells, a "wall" of withdrawal wells would "pull" contaminated water and slurry towards them, also increasing the hydraulic gradient towards the withdrawal wells. The effect of this was certainly greatest when injection is occurring; however, withdrawal has never ceased and has likely had a huge impact on hydraulic gradient in the region, in effect pulling slurry and contaminated water towards the drinking water wells in the subject communities.

Slurry, slurry water, and natural waters that have come in contact with the slurry have undoubtedly migrated from the inject points into the drinking water wells in the subject communities.

Use

Water wells in the area have historically been the sole source of drinking, cooking and bathing water. Recently, bottled water has been used for drinking and cooking in some homes, and water is supplied for pickup at a local community center.

Unknowns

Historically, organic contaminants were introduced into the coal slurry from the processing facilities as an aid in flocculation. These contaminants included diesel fuel and acrylamides, both highly toxic carcinogens. Additionally, coal itself introduces organic contaminants into the environment, including polynuclear aromatic hydrocarbons, many of which are known or suspected carcinogens. As it is clear that slurry has impacted the wells in the region, it is also with certainty that in the residents have been exposed to these organic contaminants. To date, sampling for these contaminants has not been completed.

Based on this continuing review, I believe that coal mining and related activities has likely contaminated the drinking water supply in the Seth/Prenter area. This contaminated water migrated to the water supply wells in the subject communities and was used for consumption,

bathing and cooking. This exposure has likely put these residents at increased risk of negative health effects.

As stated, work is ongoing, and subsequent reports will be provided. Should you have any questions, please feel free to contact me.

Sincerely;

D. Scott Simonton, PE, PhD

11:32 am on Thursday, March 19, 2009



47°
Feels like 47°

Letters

March 13, 2009

Readers' forum: March 13, 2009

Page 2 of 2

Eldridge should be ashamed of Barbie bill

Editor:

What has gotten into lawmakers when they have nothing else to do but sit in the Legislature and come up with stupid ideas like the Barbie bill?

What's wrong with young girls wanting to be beautiful? If Barbie dolls can accomplish this, then I say, "More power to them."

Every young girl, and boy, should want to strive to look as good as possible, whether they are influenced by Barbie dolls or not.

Most of our legislators have West Virginia's best interest at heart and really try to make and pass laws that will benefit our state. When one of them comes up with something like this, I wonder what motivates them to dwell on a subject that is of no importance to anyone or anything, let alone our state!

It appears that Delegate Eldridge doesn't place an importance on physical appearance, just on intellect. Why can't we strive for both? My two girls played with Barbies, and neither ever said, "I want to be beautiful like Barbie, and live my life in a plastic world just like her." They are both grown, beautiful and intelligent, as well!

My son, who is also now grown, played with GI Joe. Does that mean he was influenced to initiate war or shoot people and not want or do anything other than play army? I think not!

All parents should promote physical beauty, as well as striving for intellectual and emotional development, whether they have daughters or sons.

Delegate Eldridge should be embarrassed for wasting taxpayers' money. The people in West Virginia and Lincoln County deserve much more!

Nancy Corie

Charleston

Eldridge makes W.Va. look bad over Barbie

Editor:

As a former resident of Braxton County and a college graduate, I would like to know who voted to put Jeff Eldridge in office. Now, I understand why people of other states think that everyone from West Virginia thinks like that.

If I lived in Lincoln, I would be calling for his resignation to any political office. What a waste of taxpayers' hard-earned money in West Virginia.

My oldest daughter learned to sew designing clothes for her Barbie doll when she was in her early teens. It was hard for me to believe what I was reading when I checked the Gazette for obituaries like I do each morning.

Dolly Woodell

Chocowinity, N.C.

Prenter is having big water problems

Editor:

Did you ever give a thought as to what it would be like to live or try to live where you didn't have clean water to drink, for bathing, cooking, washing your clothes and all the many things we need clean water for in our daily lives?

They say a little community in the county of Boone is having that problem today.

Many years ago, when I was a little boy, my mother and father, myself and, along the way, my brother and sister, lived at Prenter.

One of my first recollections was we had water and natural gas in the house.

This was in the 1920's. Around 1929, when the coal miners were getting hepped up to go union, my dad was 100 percent union; the coal company said we would have to get out of Prenter. So we moved down to Seth. My Dad kept up his union organizing. I think it was 1932, we went back to Quarier on Cabin Creek.

Let me tell you about a cook stove my mom used. It was meant for wood and coal, but we had a man who knew



about stoves who fitted that coal stove with a unit that switched it to gas. Then, when we moved to Seth, my dad took this gas unit out so we could go back to wood and coal. That was how it was back in those bygone days.

The mines started working some. My dad went to work at United. He still had the old Essex. I think he finally ruined the motor, burning raw, pure oil gas, straight out of the ground. Not many people had money for gas in those days, so at night some broke the law taking the raw gas that was not theirs to take.

Jackie Gleason would have said, "Those were the days."

Getting back to Prenter, there was a little building next to the Club House, in which a lot of people stayed. These people stayed at the Club House, not the little building, which housed the pump and things that supplied water for all of Prenter. We lived below the pump house and, sometimes, when the weather was hot, my mother would have me take a little bucket and run up there and get some cold water to drink.

There was a little stream that ran out of the hill behind the Club House, and I always thought that was the stream that supplied Prenter.

Eighty years ago, we had no idea that someday people would rip the tops off the mountains to get the coal, rather than do it the old-fashioned way - go inside like they had done for 100 years.

I guess we are getting close to that day when fresh water will be more costly and harder to find than an honest politician or a real minister of God.

I can't begin to know the answer to how to fix the water problem at Prenter, but I sure hope.

Emery E. Higginbotham

St. Albans

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3:14 pm on Thursday, March 19, 2009



53°

Feels like 53°

Home News Opinion Sports Outdoors Entertainment Food & Dining Home & Style Multimedia Obituaries Celebrations Classifieds Cars Jobs Homes Personals

News

March 18, 2009

Scientists: Tests show metals in state's coal slurry

By The Associated Press

Page 2 of 2

MORGANTOWN, W.Va. — West Virginians eager to know what's in the slurry that coal companies pump into worked-out underground mines will have to wait until May for the state's answers, but preliminary independent tests suggest it contains heavy metals they wouldn't want to drink.

Lab results, shared with The Associated Press by citizen activists with the Sludge Safety Project who plan to make their findings public Thursday, detected arsenic, lead and several other metals at levels exceeding federal drinking water standards.

Slurry, a byproduct of washing coal, is what's left after operators remove clay, dirt, sulfur and other impurities to meet demand for coal that burns efficiently.

For decades, slurry has been injected into abandoned mines in Appalachia as a cheap alternative to massive dams or filtration and drying systems. But hundreds of coalfield residents are now suing coal companies, claiming that waste has leaked into aquifers, contaminated well water and caused health problems from kidney disease to cancer.

The U.S. Environmental Protection agency has long allowed states to use old mines as "backfill wells" for waste, documenting some 5,000 of them in 17 states when it last counted in 1999. But the EPA said that includes sites used to store sludge, ash, sand, cement and other materials, and it cannot identify wells by subcategories.

That means it's impossible to know how many of the sites contain coal slurry.

A survey of several Appalachian states suggests the practice is rare in Pennsylvania and Ohio, which reported only two slurry injection sites each. Alabama says operators there have 11 active injection sites, while Kentucky reports 14.

West Virginia regulators permit 15 companies to inject slurry, but the practice of injecting waste is broader: A 2008 report cites 50 injection sites for slurry and sludge, with a total of 600 pipes into the ground.

The growing concern in West Virginia has legislators and the state Department of Environmental Protection focused on a potential public health problem that for years only mattered to people with black and orange water spewing from their taps.

To comply with a legislative inquiry on whether underground injection is safe, the DEP is testing water and slurry samples from six sites in Monongalia, McDowell, Raleigh, Nicholas, Kanawha and Boone counties.

Those results will be made public in early May, DEP spokeswoman Kathy Cosco told the AP this week. Then the Department of Health and Human Resources will decide if there is a potential health threat.

But DEP also shared samples with scientists at Wheeling Jesuit University, who sent them to Heidelberg University's National Center for Water Quality Research in Tiffin, Ohio.

Those tests found six metals — antimony, arsenic, lead, barium, cadmium and chromium — in levels that exceeded federal standards for primary drinking water at one or more sites, said chemist Mary Ellen Cassidy and biologist Ben Stout.

What's unclear, Cassidy said, is whether DEP's samples came from the pipe where the slurry is injected or the underground pool where it is stored. In theory, slurry is pumped into a void where the solids settle out and the water remains trapped as long as the geology is undisturbed.

The tests also found high levels of metals in the solids at all six sites, the scientists said.

Primary drinking water standards are set by the federal government to protect public water supplies from substances known to cause health problems.

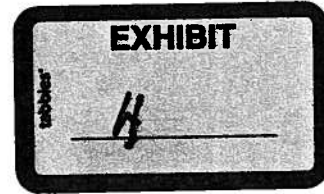
Though federal regulations don't apply to unregulated, private wells, Cassidy and Stout argue it's fair to hold industry to them: DEP said in documents last year that it would deny injection permits "if an existing mine pool is being used as a potable water source for even one person."

The West Virginia Coal Association argues that if injection weren't safe, the EPA wouldn't allow it. Slurry, it argues, is a benign blend of coal, dirt, water and chemicals that help suspended solids clump together.

But EPA hasn't studied the issue in a decade, and DEP director Randy Huffman has acknowledged he has concerns and questions.

There is no consensus on the chemical composition of slurry or whether it is hazardous to human health if ingested over decades, as some coalfields residents believe they have done. Nor can state or federal regulators say how much slurry has been pumped underground.

Last week, state Sen. Randy White, saying he was frustrated by delays in DEP's research, introduced legislation that would ban slurry injection starting May 1. So far, no action has been taken on the Webster County Democrat's bill.



IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

**KERRLIE E. BISHOP, and
ALFREDA BISHOP**

CIVIL ACTION NO. 08-C-243

DAVID T. BRADLEY

CIVIL ACTION NO. 08-C-244

**DARRELL L. BUFFINGTON, SR., and
PAMELA E. HALSTEAD-BUFFINGTON,**
Individually, and as Guardians of
**STEPHEN C. MULLINS, a minor, and
LINDSAY MULLINS, a minor,**

CIVIL ACTION NO. 08-C-245

**JOHN H. BUFFINGTON,
DORIS BUFFINGTON, Individually, and as
Parents and Guardians of
JONATHAN BUFFINGTON, a minor**

CIVIL ACTION NO. 08-C-283

**DONALD TINCHER, JR.
JANICE DANIELLE HARPER, Individually,
and as Parents and Guardians of
CLAYTON SULLIVAN, a minor,
CODY SULLIVAN, a minor,
HALI CHYANN SULLIVAN, a minor, and
JOHN C. SULLIVAN, a minor**

CIVIL ACTION NO. 08-C-246

JANET BUFFINGTON

CIVIL ACTION NO. 08-C-247

**MARGARET BUFFINGTON, and
JOHN BUFFINGTON**

CIVIL ACTION NO. 08-C-248

**ANDROMADA DAMRON Individually,
and as Parent and Guardian of
DRAKE MOORE, a minor, and
ROGER DALE DAMRON, III, a minor, and
BARRY A ASHLEY**

CIVIL ACTION NO. 08-C-249

**STACY M. DEAL Individually,
and as Parent and Guardian of
JACOB I. DEAL, a minor, and
JOSEPH E. DEAL, a minor,**

CIVIL ACTION NO. 08-C-250

**PAMELA DONAHUE, as Administratrix of the
ESTATE OF JOHN A. DONAHUE, II
PAMELA J. DONAHUE Individually,**

CIVIL ACTION NO. 08-C-251

**PAMELA J. DONAHUE INDIVIDUALLY,
AND AS PARENT AND GUARDIAN OF
JOHN Z. DONAHUE, A MINOR,**

**MICHAEL FENSTERMACHER, INDIVIDUALLY,
AND AS PARENT AND GUARDIAN OF
MICHAEL C. FENSTERMACHER, A MINOR,**

JAMIE M. DOTSON

**VIRGIL DOTSON,
NORA DOTSON
GEORGE DOTSON,
SAMATHA DOTSON THOMAS, AND
CARRIE DOTSON**

**LUTHER E. HALL, AND
PRISCILLA JANE HALL**

**JENNIFER M. HALL-MASSEY, ADMINISTRATRIX OF
THE ESTATE OF RANDALL V. HALL, JR.**

TIFFANY HALSTEAD

**JOYCE L. HARPER, AND
LELAND J. FELTY**

**GLENN R. HAYES, JR., AND
PATRICIA HAYES, INDIVIDUALLY,
AND AS PARENTS AND GUARDIANS OF
GLENN R. HAYES, III, A MINOR, AND
LIZA JOANN HAYES, A MINOR,**

CHESTER SANTONIA

**CHASITY WALL, INDIVIDUALLY,
AND AS PARENT AND GUARDIAN OF
CHLOE BETH WALL, A MINOR,
JERSEY MARIE WALL, A MINOR, AND
CADE RYAN WALL, A MINOR,**

**NORVALL R. JENKINS, AND
SHARON G. JENKINS,**

CIVIL ACTION NO. 08-C-252

CIVIL ACTION NO. 08-C-254

CIVIL ACTION NO. 08-C-255

CIVIL ACTION NO. 08-C-256

CIVIL ACTION NO. 08-C-257

CIVIL ACTION NO. 08-C-258

CIVIL ACTION NO. 08-C-259

CIVIL ACTION NO. 08-C-260

CIVIL ACTION NO. 08-C-261

CIVIL ACTION NO. 08-C-262

CIVIL ACTION NO. 08-C-263

**AMANDA JO JENKINS, INDIVIDUALLY,
AND AS PARENT AND GUARDIAN OF
MICHAEL JENKINS, A MINOR**

CIVIL ACTION NO. 08-C-264

**RALPH E. LAMBERT, AND
MARIA F. LAMBERT**

CIVIL ACTION NO. 08-C-285

**JEREMY S. LAMBERT, AND
JENNIFER LAMBERT, INDIVIDUALLY,
AND AS PARENTS AND GUARDIANS OF
ALYSSA M. LAMBERT, A MINOR,**

CIVIL ACTION NO. 08-C-265

**CHARLES D. MASSEY,
JENNIFER M. HALL-MASSEY, INDIVIDUALLY,
AND AS PARENTS AND GUARDIANS OF
RYAN H. MASSEY, A MINOR, AND
CLAY M. MASSEY, A MINOR**

CIVIL ACTION NO. 08-C-266

JOHN B. MCCORMICK

CIVIL ACTION NO. 08-C-267

BETTY MCNEELY

CIVIL ACTION NO. 08-C-268

BARBARA J. SEBOK

CIVIL ACTION NO. 08-C-269

**TERRY S. KEITH, AND
BRADLEY E. KEITH, AND
CHRISTINA KEITH, INDIVIDUALLY,
AND AS PARENTS AND GUARDIANS OF
CASSIE L. KEITH, A MINOR,
TRENT KEITH, A MINOR,
HOPE KEITH, A MINOR, AND
ANA BETH KEITH, A MINOR**

CIVIL ACTION NO. 08-C-270

**HARRY L. SEBOK,
PATRICIA SEBOK, AND
RYAN SEBOK**

CIVIL ACTION NO. 08-C-271

**ESHEL M. SMITH, AND
PEGGY SUE SMITH, INDIVIDUALLY,
AND AS PARENTS AND GUARDIANS OF
HANNAH MARIE SMITH, A MINOR,
MARY SMITH, A MINOR**

CIVIL ACTION NO. 08-C-272

RYAN S. SMITH

CIVIL ACTION NO. 08-C-273

**PATSY STEELE, AND
TRACY BURDETTE, INDIVIDUALLY,
AND AS PARENT AND GUARDIAN OF
GAVIN BURDETTE, A MINOR**

CIVIL ACTION NO. 08-C-274

**JERRY A STEWART, AND
MELBA STEWART**

CIVIL ACTION NO. 08-C-275

**JAMES E. BUTCHER, JR.
REBECCA A. BUTCHER,
JAMES A BUTCHER, AND
MARTY J. BUTCHER**

CIVIL ACTION NO. 08-C-286

**CARRIE BUTCHER, INDIVIDUALLY,
AND AS PARENT AND GUARDIAN OF
TRENT J. BUTCHER, A MINOR**

CIVIL ACTION NO. 08-C-276

DEBRA THOMAS

CIVIL ACTION NO. 08-C-277

**JOY E. OSBORNE, AND
GINGER OSBORNE, INDIVIDUALLY,
AND AS PARENTS AND GUARDIANS OF
TORI THOMAS, A MINOR, AND
HANNAH OSBORNE, A MINOR**

CIVIL ACTION NO. 08-C-287

**VIRGIL R. WEIKLE, AND
KATHY WEIKLE**

CIVIL ACTION NO. 08-C-278

**RONNIE F. WHITTEN, AND
SHARON WHITTEN**

CIVIL ACTION NO. 08-C-279

**AMANDA WHITTEN, INDIVIDUALLY,
AND AS PARENT AND GUARDIAN OF
DEVON WITTEN, A MINOR,
ELIZA WHITTEN, A MINOR,
JUSTIN WHITTEN**

CIVIL ACTION NO. 08-C-280

BARRY R. WILLIAMS

CIVIL ACTION NO. 08-C-284

**KEVIN WILLIAMS, AND
MICHELLE WILLIAMS, INDIVIDUALLY,
AND AS PARENTS AND GUARDIANS OF
HEATHER WILLIAMS, A MINOR,
SAMATHA WILLIAMS, A MINOR,
KELSEY WILLIAMS, A MINOR, AND
MEGAN WILLIAMS, A MINOR**

CIVIL ACTION NO. 08-C-281

PLAINTIFFS,

V.

JUDGE WILLIAM S. THOMPSON

**MASSEY ENERGY CO., A DELAWARE CORP.,
OMAR MINING CO., A WEST VIRGINIA CORP.,
INDEPENDENCE COAL CO., A VIRGINIA CORP.,
ELK RUN COMPANY, INC., A WEST VIRGINIA CORP., D/B/A
BLACK CASTLE MINING CO., A WEST VIRGINIA CORP.,
PEABODY ENERGY CORP., A MISSOURI CORP.,
PINE RIDGE COAL CO., A MISSOURI CORP., AND
FEDERAL COAL CO., A WEST VIRGINIA CORP.
JOHN DOE CORPORATION**

DEFENDANTS.

CERTIFICATE OF SERVICE

**I, ROGER A. DECANIO, DO HEREBY CERTIFY THAT ON MARCH 19, 2009, I SERVED
PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF TO STOP UNDERGROUND
SLURRY INJECTIONS IN THE SETH PRENTER AREA UPON THE PARTIES BY PLACING
A TRUE COPY IN AN ENVELOPE, POSTAGE PREPAID, IN UNITED STATES MAIL, ADDRESSED AS
FOLLOWS AND BY FACSIMILE TO COUNSEL BELOW:**

**W. HENRY LAWRENCE, ESQ.
STEPTOE & JOHNSON, PLLC
ATTORNEYS AT LAW
CHASE TOWER, SIXTH FLOOR
P.O. Box 26302-2190
CLARKSBURG, WV 26302-2190
COUNSEL FOR PINE RIDGE COAL COMPANY, LLC AND
PEABODY ENERGY CORPORATION**

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JACKSON KELLY, PLLC
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CHARLESTON, WV 25322
COUNSEL FOR MASSEY ENERGY Co.**

**GARY HART, ESQ.
JACKSON KELLY, PLLC
1600 LAIDLEY TOWER
P.O. BOX 553
CHARLESTON, WV 25322
COUNSEL FOR FEDERAL COAL CO.**

**BLACK CASTLE DEVELOPMENT CO.
P.O. BOX 26765
RICHMOND, VIRGINIA 23261**

**ELK RUN COAL CO., INC.
C/O LEGAL DEPARTMENT
315 70TH STREET S.E.
CHARLESTON, WEST VIRGINIA 25304**

**INDEPENDENCE COAL CO., INC.
C/O MASSEY COAL SERVICES, INC.
LEGAL DEPARTMENT
315 70TH STREET S.E.
CHARLESTON, WEST VIRGINIA 25304**

**OMAR MINING CO.,
C/O LEGAL DEPARTMENT
315 70TH STREET S.E.
CHARLESTON, WEST VIRGINIA 25304**



**ROGER E. DECANIO, ESQ. (NO. 8176)
THE SUTTER LAW FIRM, PLLC
1598 KANAWHA BLVD., EAST
CHARLESTON, WEST VIRGINIA 25311
(304) 343-1514**