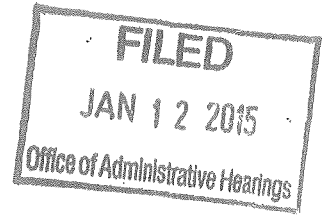


COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
DOW- 34081



ENERGY AND ENVIRONMENT CABINET

PLAINTIFF

VS.

ADMINISTRATIVE COMPLAINT

FRASURE CREEK MINING, LLC

DEFENDANT

Service via certified mail:

National Corporate Research, Ltd., Registered Agent  
828 Lane Allen Rd., Suite 219  
Lexington, KY 40504

For service on:

Frasure Creek Mining, LLC  
P.O. Box 100  
Oak Hill, WV 25901

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Comes now the Plaintiff, Commonwealth of Kentucky, Energy and Environment Cabinet (hereinafter the "Cabinet"), by and through counsel, and for its Administrative Complaint against the Defendant, Frasure Creek Mining, LLC (hereinafter "Frasure Creek"), states and alleges as follows:

1. The Cabinet is charged with the statutory duty of protecting public health and the environment pursuant to KRS Chapter 224 and the regulations promulgated pursuant thereto.
2. According to the website of the Kentucky Secretary of State, the Defendant, Frasure Creek is a Kentucky limited liability company in good standing. The Defendant owns and operates coal facilities within Kentucky. Frasure Creek's principal office is listed as P.O. Box 100, Oak Hill, WV 25901.

3. Frasure Creek has been issued multiple permits from the Kentucky Division of Mine Reclamation and Enforcement (hereinafter "DMRE") to conduct coal mining and reclamation operations. Frasure Creek has been issued multiple Kentucky Pollution Discharge Elimination System (hereinafter "KPDES") permits by the Cabinet's Division of Water (hereinafter "DOW") for discharge of treated effluent from its surface mining facilities to waters of the Commonwealth. A table showing DMRE permit numbers with the corresponding KPDES permit numbers is attached as Exhibit 1.

4. On or about April 16, 2013, the Cabinet and Frasure Creek entered into an Agreed Order to resolve case number DOW - 33597 for previous KPDES permit violations at various Frasure Creek facilities.

5. On or about November 14, 2014, the Cabinet received a Notice of Intent to Sue pursuant to Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), on behalf of several environmental advocacy organizations and individuals alleging violations of KPDES permit requirements. A copy of the Notice of Intent to Sue is attached hereto as Plaintiff's Exhibit 2.

6. In response to the Notice of Intent to Sue, from December 4, 2014 through December 30, 2014, authorized representatives of the Cabinet's Division of Enforcement (hereinafter "DENF") reviewed numerous Discharge Monitoring Reports (hereinafter "DMRs") for multiple KPDES permits submitted by Frasure Creek covering the period of October 2013 through June 2014.

7. The DENF DMR review identified approximately 305 violations of KRS 224.70-110 related to duplicate or inaccurate reporting identified approximately 52 violations of KRS 224.70-110 related to discharge exceedences of KPDES permit limits.

**DUPLICATE OR INACCURATELY REPORTED  
DISCHARGE MONITORING RESULTS**

8. Paragraphs 1 - 7 are incorporated by reference as if fully set forth below.

9. On or about December 5, 8, and 9, 2014, the DENF issued Frasure Creek multiple NOV's for approximately 150 violations of KRS 224.70-110 for failing to comply with 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(l)(4)(i), by failing to accurately report monitoring results on DMRs for submitted pursuant to KPDES permits. Remedial measures included in the December 5, 8, and 9, 2014, NOV's requested Frasure Creek to submit written explanations for the duplicated data discovered in the review. Copies of the December 5, 8, and 9, 2014, NOV's are attached hereto and incorporated herein as Plaintiff's Exhibit No. 3.

10. On or about December 19, 2014, the DENF issued Frasure Creek multiple NOV's for approximately 155 violations of KRS 224.70-110 for failing to comply with 401 KAR 5:065, Section 2(1) by failing to comply with monitoring and reporting requirements as required by 40 CFR 122.41(l)(4)(a); by failing to accurately report monitoring results on DMRs submitted pursuant to KPDES permits as required by 40 CFR 122.41(l)(4)(i) & (iii); and failing to comply with the signatory requirements for DMRs as required by 40 CFR 122.41(k). Remedial measures included in the December 19, 2014, NOV's requested Frasure Creek to comply with the terms of its KPDES permits. Copies of the December 19, 2014 NOV's are attached hereto and incorporated herein as Plaintiff's Exhibit No. 4.

**NUMERIC VIOLATIONS OF KPDES  
PERMIT EFFLUENT LIMITATIONS**

11. Paragraphs 1 - 10 are incorporated by reference as if fully set forth below.

12. On or about December 11, 2014, the Cabinet's DENF issued Frasure Creek a NOV for approximately 52 violations of KRS 224.70-110 for failing to comply with 401 KAR

5:065, Section 2(1), which cites 40 CFR 122.41(a), for to comply with the KPDES permit limits for Total Suspended Solids (hereinafter "TSS"), Total Recoverable Iron (hereinafter "TRFe"), and Total Recoverable Manganese (hereinafter "TRMn"). Remedial measures included in the December 11, 2014, NOV requested Frasure Creek to comply with the terms of its KPDES permits. A copy of the December 11, 2014, NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 5.

**WHEREFORE**, the Plaintiff respectfully requests that judgment be entered finding the Defendant in violation of the statutes and regulations cited in the NOVs and awarding the Cabinet the following relief:

1. That the Defendant be ordered to pay a civil penalty of twenty-five thousand dollars (\$25,000.00) per day per violation identified above pursuant to KRS 224.90-010(1);
2. That the Defendant be ordered to complete all remedial measures listed in each NOV referenced above to the satisfaction of the Cabinet by a date certain;
3. That the Defendant be ordered to comply with all applicable statutes, regulations, and KPDES permit conditions;
4. That the Defendant be enjoined from further violations of KRS 224 and the regulations promulgated pursuant thereto; and
5. For any and all further relief to which the Cabinet is entitled.

Respectfully submitted,

ENERGY AND ENVIRONMENT  
CABINET



A handwritten signature in black ink, appearing to read "D. L. ...", is written over a horizontal line.

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