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November 14, 2014

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

FRASURE CREEK MINING, LLC
P.O. Box 100
Oak Hill, WV 25901

FRASURE CREEK MINING, LLC
c/o National Corporate Research, Ltd.
828 Lane Allen Road
Suite 219
Lexington, KY 40504

TRINITY COAL CORPORATION
P.O. Box 100
Oak Hill, WV 25901

TRINITY COAL CORPORATION
c/o National Corporate Research, Ltd.
828 Lane Allen Road
Suite 219
Lexington, KY 40504

Re: Notice of Intent to Sue for Clean Water Act Violations

Dear Sir or Madam:

The purpose of this letter is to inform you that Appalachian Voices, Inc., Waterkeeper Alliance, Inc., Kentuckians For The Commonwealth, Inc., Kentucky Riverkeeper, Inc., and Ms. Pat Banks (collectively, the “Citizen Groups”) intend to sue Frasure Creek Mining, LLC and its affiliate, Trinity Coal Corporation (collectively, “Frasure Creek”), for violations of the federal Clean Water Act and the laws of Kentucky. ***Frasure Creek has continued to pollute streams in eastern Kentucky in violation of its permits and has resumed submission of false discharge monitoring reports to government officials.***

As you are aware, three years ago the Citizen Groups discovered that Frasure Creek had repeatedly copied the exact same pollution data from one report to the next and submitted the falsified reports to the Kentucky Energy and Environment Cabinet (“Cabinet”). Now, after an apparent pause in its false reporting, Frasure Creek has resumed this illegal practice. As before,

the Cabinet has utterly failed to even notice these flagrant violations of the laws that it is bound to uphold. Frasure Creek's actions—and the Cabinet's failures to act—undermine the regulatory framework that safeguards the people and the waters of Kentucky from dangerous pollution.

Because the Cabinet seems incapable of meaningful oversight, the Citizen Groups must once again step in, both to expose rampant violations of the Clean Water Act and to enforce the law. Accordingly, the Citizen Groups hereby notify Frasure Creek of their intent to sue pursuant to § 505(b) of the Clean Water Act (CWA), 33 U.S.C. § 1365(b), for violations of “an effluent standard or limitation,” as defined under CWA § 505(a)(1)(A) and (f), 33 U.S.C. § 1365(a)(1)(A) and (f). Specifically, Frasure Creek has once again submitted numerous false discharge monitoring reports (DMRs) to the Cabinet, in addition to repeatedly discharging pollutants in exceedance of numerical limits contained in its CWA permits. Through review of public documents, the Citizen Groups have discovered that Frasure Creek has resumed its unlawful practice of submitting the same monitoring data on multiple DMRs. The false reporting violations noticed herein are exactly the same type of reporting violations by Frasure Creek that the groups uncovered and sought to enforce in 2010, only this time, the duplications are even more extensive.

Under CWA § 301(a), 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant into waters of the United States from a point source without, or in violation of, a permit issued pursuant to CWA § 402, 33 U.S.C. § 1342. In order to comply with permit conditions and CWA statutory requirements, owners and operators of point sources are required to “install, use, and maintain . . . monitoring equipment or methods” to sample effluents. CWA § 308(A)(iii)-(iv), 33 U.S.C. § 1318(A)(iii)-(iv). In addition, owners and operators must “establish and maintain such records” and submit them in the form of DMR in accordance with CWA § 308(A)(i)-(ii), 33 U.S.C. § 1318(A)(i)-(ii), permit conditions, and applicable regulations. CWA § 308(a)(4)(A)(i), 33 U.S.C. § 1318(a)(4)(A)(1).

Frasure Creek has violated, and continues to violate, “an effluent standard or limitation” under CWA §§ 505(a)(1)(A) and (f), 33 U.S.C. §§ 1365(a)(1)(A) and (f), in reference to KPDES Coal General Permit No. KYG040000 (the “General Permit”),¹ issued by Cabinet, pursuant to § 402(b) of the CWA, 33 U.S.C. § 1342(b). Violation of “an effluent standard or limitation,” for purposes of a KPDES permit, is defined pursuant to CWA § 505(f), 33 U.S.C. § 1365(f), 401 K.A.R. 5:065 and 40 C.F.R. §§ 122 and 123.25.

These violations are continuous and ongoing.

¹ The current version of KPDES Coal General Permit No. KYGE40000 became effective on October 1, 2014, thus was not in effect for Quarters 1 and 2 of 2014, during which time the violations alleged in this NOI occurred. The current general permit replaced the previous version, KPDES Coal General Permit No. KYG040000, which went into effect on August 1, 2009. Unless otherwise noted, all references to the Coal General Permit in this Notice refer to the version that became effective on August 1, 2009.

I. Frasure Creek's history of false reporting and illegal water pollution

a. Citizens Expose False Reporting Epidemic

In 2010, while reviewing DMRs submitted by Frasure Creek between January 2008 and December 2009, the Citizen Groups documented numerous instances in which discharge monitoring data had been copied verbatim from one DMR to another, repeating the exact same purported analytical results for 42 separate values on two or more different DMRs. Throughout the same time period, Frasure Creek did not report a single violation of the numerical pollution limits in its Clean Water Act permits.²

On October 7, 2010, the Citizen Groups sent a 60-day notice of intent to sue letter ("NOI") under the CWA to Frasure Creek, the Cabinet, the United States Environmental Protection Agency (EPA), as well as other officials.³ The NOI alleged false reporting of discharge monitoring data at 13 Frasure Creek mountaintop coal removal mines. Specifically, the Citizen Groups alleged that Frasure Creek had submitted at least 30 DMRs containing duplicated—and therefore false—data. In total, Frasure Creek committed over 9,000 violations of the CWA, which the Cabinet had failed to address and, indeed, had failed to even notice.

b. The Cabinet shields Frasure Creek from meaningful prosecution

On the final business day of the 60-day notice period, December 3, 2010, the Cabinet filed suit against Frasure Creek in the Franklin Circuit Court to prosecute the violations that the Citizen Groups had brought to light. On that same day, the Cabinet also filed a proposed Consent Judgment, announcing its intent to absolve Frasure Creek of all violations to date, both known and unknown. Despite having brought Frasure Creek's reporting violations to the Cabinet's attention, the Cabinet made no attempt to communicate with the Citizen Groups during the notice period and prior to filing the proposed Consent Judgment.

In its enforcement action, the Cabinet down-played the seriousness of Frasure Creek's violations by relabeling the false reporting as "transcription errors." In performing its investigation and penalty calculation, the Cabinet utterly failed to acknowledge that Frasure Creek's "transcription errors" had the potential to hide dangerous pollution discharge violations and, in fact, were the most serious type of violation of the Clean Water Act, which relies on honest self-reporting by permittees. Sampling and monitoring of pollution discharges is "not designed to be a mere academic exercise," but rather binds the permittee to the "reporting and records retention requirements of the NPDES permit *that are central to adequate administration and enforcement* of limits on substantive discharges under the Clean Water Act." *Sierra Club v. Simkins Indus., Inc.*, 847 F.2d 1109, 1115 (4th Cir. 1988) (emphasis added).

² In the few instances for which a number was reported that exceeded permit limits, the reported numbers were very clearly typographical errors involving misplaced decimals.

³ The Clean Water Act requires that groups seeking to sue polluters under the Clean Water Act provide at least 60 days' notice before filing a citizen suit. The purpose of the notice period is to give EPA and the state regulatory authorities, here the Cabinet, a chance to enforce the violations themselves and thereby preempt citizen enforcement.

Frasure Creek and the Cabinet promptly moved to have the court sign and enter the Consent Judgment. Both the Cabinet and Frasure Creek objected to the Citizen Groups' Motion to Intervene in the Cabinet's enforcement. The Franklin Circuit allowed the Citizen Groups to intervene for the purpose of determining whether the proposed Consent Judgment was fair, reasonable, adequate, and in the public interest. The Cabinet and Frasure Creek continued to oppose the Citizen Groups' intervention and sought—unsuccessfully—to have the Franklin Circuit's intervention ruling reversed.⁴

The Citizen Groups sought to intervene, not merely as an exercise in citizen involvement, but because the proposed Consent Judgment⁵ was not sufficient either to bring Frasure Creek into compliance with the Clean Water Act or to deter future noncompliance. If it were entered, the proposed Consent Judgment would require Frasure Creek to pay fines in the amount of \$310k, less than 1% of the \$320 million potential penalty that the Cabinet could assess under the Clean Water Act. In addition to the meager penalty, the Consent Judgment requires Frasure Creek to submit a Compliance Assurance Plan (though the Consent Judgment contains no mechanism for the Cabinet to determine whether Frasure Creek was conforming to the plan) and undergo a period of enhanced reporting of its discharge monitoring.⁶

c. Frasure Creek's false reporting concealed rampant pollution violations

The Cabinet's investigation into the false reporting problems focused on the contract laboratories. Stating that the problems uncovered arose because of improper oversight of those laboratories, the Cabinet sought legislative approval to develop a wastewater laboratory certification program and require permittees to use certified laboratories. In the first quarter 2011, Frasure Creek began using J&M Monitoring, Inc. and McCoy And McCoy, Inc., both of which are nationally certified laboratories, to sample and test its wastewater.⁷ Both laboratories have subsequently been certified under Kentucky's new certification program.

⁴ On February 21, 2011 the Cabinet and Frasure Creek filed with the Kentucky Court of Appeals, Writs of Mandamus and Prohibition, asking the Court to enjoin Franklin Circuit Judge, Hon. Phillip J. Shepherd from allowing the Citizen Groups' intervention. When the writs were denied, the Cabinet and Frasure Creek appealed to the Supreme Court of Kentucky. The Supreme Court also refused to enjoin the intervention, noting that "federal law encourages the states to permit interested citizens to intervene and be heard in state court enforcement proceedings under the state analogs of the [Clean Water Act]." *Commonwealth, Energy and Environment Cabinet v. Shepherd*, 366 S.W.3d 1, 8 -9 (Ky. 2012).

⁵ At the time of this filing, the Consent Judgment has not been entered by the Franklin Circuit Court.

⁶ The Cabinet's response to Frasure Creek's gross violation of self-reporting requirements was to ask the company to do more self-reporting. The Consent Judgment contained no provision by which the Cabinet would evaluate or even question the accuracy of the enhanced reporting.

⁷ J&M Monitoring, Inc. has been accredited for technical competence in the field of environmental testing by the American Association for Laboratory Accreditation. McCoy And McCoy, Inc was accredited by the Virginia Division of Consolidated Laboratory Services under the National Environmental Laboratory Accreditation Program.

After changing laboratories, Frasure Creek immediately began self-reporting significant pollution exceedances.⁸ On June 28, 2011, the Citizen Groups served a second NOI on Frasure Creek for *more than 2,800* pollution violations Frasure Creek self-reported during the first quarter of 2011.

The sudden spike of pollution violations during the first quarter after Frasure Creek changed labs was a clear demonstration that the purportedly harmless “transcription errors” addressed by the Cabinet in the December 2010 Consent Judgment were actually concealing serious pollution problems at the company’s numerous mountaintop removal operations. From January 2011 through March 2013, Frasure Creek reported *thousands* of exceedances of the numerical pollution limits contained in its CWA permits.

The Citizen Groups responded to Frasure Creek’s violations of permit limits by sending a second NOI in June of 2011. Once again, the Cabinet stepped in with a sweetheart deal settlement. The settlement (an “agreed order” of the Cabinet), entered into as a Final Order of the Cabinet Secretary on April 16, 2013, purported to resolve Frasure Creek’s first quarter 2011 violations noticed by the Citizen Groups, as well as many other self-reported violations and unknown “like violations” occurring between the first quarter of 2011 and the first quarter of 2013.⁹

Since the Agreed Order was entered, Frasure Creek has submitted at least 34 DMRs with self-reported pollution exceedances that have not been enforced by the Cabinet. This number is small in comparison to self-reported exceedances during the period before the entry of the Agreed Order. The reduction in number of exceedances coincides with Frasure Creek’s resumption of false reporting.

⁸ Where Frasure Creek had previously reported no permit exceedances, it now reported numerous violations for both daily and monthly effluent limitations of parameters for total recoverable manganese, total recoverable iron, acidity/alkalinity, pH, and total suspended solids. Specifically, Frasure Creek had violated the monthly average manganese limit by more than 10 times allowed by its permit, the daily maximum iron limit up to 13 times higher than allowed, and daily maximum total suspended solids up to 4.7 times higher than allowed.

⁹ After receiving the Citizen Groups’ second NOI, the Cabinet once again stepped in with a protective enforcement action, this time in the form of an Administrative Complaint in the Cabinet’s Office of Administrative Hearings filed on the last day before the Citizen Groups’ notice period ran. The Cabinet and Frasure Creek negotiated the settlement that became the April 16, 2013 Final Order behind closed doors without any participation from the Citizen Groups, despite the fact that the Citizen Groups had been allowed to intervene in the enforcement as full parties. The Citizen Groups submitted written objections to the order, but there was no indication that these were even read by the Cabinet. The Citizen Groups filed a petition for review in the Franklin Circuit Court alleging that the Cabinet, in reaching and approving a settlement agreement with Frasure Creek and without allowing the citizens, as parties, to participate in the process, violated the citizens’ due process rights. The Citizen Groups’ petition to the Franklin Circuit is still pending as of the date of service of this NOI.

II. Description of New Violations

“Those who cannot remember the past are condemned to repeat it.”

- George Santayana

Just after the settlement resolving Frasure Creek’s 2011-2013 pollution violations expired, Frasure Creek began duplicating DMRs again, despite its continued use of J&M Monitoring, Inc., a certified laboratory.¹⁰ After another records request, the Citizen Groups discovered that, since the second quarter of 2013, Frasure Creek has submitted at least 135 identically duplicated or nearly identically duplicated¹¹ DMRs to the Cabinet. ***In fact, 48% of all DMRs submitted by Frasure Creek for the first quarter of 2014 contained the exact same data that Frasure Creek had already submitted for previous monitoring periods.***¹² At the same time—and not surprisingly—the number of self-reported exceedances of permit limits was extremely low during this period.¹³ (See “Attachment 1” chart titled, “Pollution and Reporting Violations by Frasure Creek Mining, LLC”). And, as before, of all the duplicated DMRs submitted, not a single one reports an exceedance of a numerical permit limit. In fact, in some cases permit limit violations were replaced with low values in duplicate DMRs.

While Frasure Creek’s false reporting is a clear violation of the law, given the history of false DMR reporting in Kentucky, the Cabinet’s complete failure to detect or enforce these recurrent violations is an unforgivable dereliction of its duties to the citizens of the Kentucky. In defense of its proposed Consent Judgment, Cabinet Commissioner Bruce Scott proclaimed that the problems had been corrected. In testimony before the Franklin Circuit Court, Commissioner Scott acknowledged that “[t]he Cabinet should have been doing something it wasn’t.”¹⁴ He also

¹⁰ In 2011, the Kentucky General Assembly passed legislation authorizing the Cabinet to develop a lab certification program. The Cabinet has done so and the program took effect at the beginning of 2014. Before that time, Frasure Creek hired labs that are nationally certified; however, false reporting problems continue and, if anything, may be even more common.

¹¹ In numerous instances, Frasure Creek has submitted DMRs with “NA” reported for TSS, Fe and Mg in one quarter and numerical values for these parameters in the following quarter. With the exception of these few values, the DMRs are identical. The first DMRs in these pairs are submitted with requests for alternate limits due to unusual discharge (rain) events. Presumably, Frasure Creek reports “NA” because there is not an upper limit on effluent for those parameters during a qualifying discharge event. Aside from the fact that companies are still required to report the sample measurements, which Frasure Creek has failed to do, in many instances, the DMRs submitted for the following quarter, for the same outfall, contain the exact same reported measurements but replace “NA” with a numerical value. And so, the DMR is not an exact duplicate of the previous quarter, but only because three of the measurements have been updated while the others are identical.

¹² 135 of 282 monthly DMRs for flowing outfalls contained duplicated data. A significant number of DMRs reported that outfalls were not flowing during each month. Because no data are reported for outfalls that are not flowing, no comparison can be made.

¹³ Importantly, none of these self-reported pollution exceedances have been reported on falsely filed, duplicate DMRs

¹⁴ Transcript of Hearing at 53: 12-14, testimony by Bruce Scott, Energy and Env’t Cabinet v. Frasure Creek Mining, LLC, August 31, 2011.

acknowledged “concerns as to whether or not the data [produced by these labs] was [sic] representative of what the outfall discharges actually are.”^{15,16} Despite this, he stated that he believed that the Cabinet had, “corrected the problem.”¹⁷

The violations noticed herein demonstrate clearly that the Cabinet has not corrected the problem. Not only has the false reporting recurred; the Cabinet has completely failed to notice its recurrence. Prior to receiving this NOI, there is absolutely no indication that the Cabinet has even been aware of the fact that Frasure Creek has returned to its previous practice of duplicating its DMRs and turning in false Clean Water Act monitoring reports.

Once again, the Citizen Groups are bringing to light blatant violations of the Clean Water Act by Frasure Creek. Once again, the Cabinet has failed to detect widespread and obvious false reporting of pollution monitoring data by a coal company. Once again, the Cabinet has failed in its most elementary duty to protect the health and welfare of the citizens of Kentucky.

III. Notice of Violations:

The Citizen Groups now provide notice of their intent to sue Frasure Creek for additional, ongoing violations of the Clean Water Act. Specifically, the Citizen Groups provide notice of their intent to sue Frasure Creek with regard to the following falsely filed, duplicate and near-duplicate DMRs on file with KDNR since January 2014 and the following self-reported pollution exceedances reported on non-duplicated DMRs on file with KDNR since January 2014:

- Quarter 1, 2014: 106 duplicate DMRs.¹⁸ **For a DMR-specific identification of Frasure Creek’s submissions of false DMR data noticed in this letter, please see “Table 1: Duplicate DMRs submitted in Quarter 1, 2014” in Attachment 2.**
- Quarter 1, 2014: 29 near-duplicate DMRs (excluding the first in a matching set; the first matching DMRs were all from 2013). **For a DMR-specific identification of Frasure Creek’s submissions of false DMR data noticed in this letter, please see “Table 2: Near-Duplicate DMRs submitted in Quarter 1, 2014” in Attachment 2.**
- Quarters 1 and 2, 2014: 949 self-reported effluent limit violations. **For a DMR-specific identification of Frasure Creek’s submissions of self-reported violations of daily maximum and monthly average effluent limitations, please see “Table 3: Self-Reported Effluent Violations Submitted in Quarters 1 & 2, 2014” in Attachment 2.**

¹⁵ Transcript of Hearing at 33: 20-23, testimony by Bruce Scott, Energy and Env’t Cabinet v. Frasure Creek Mining, LLC, August 31, 2011.

¹⁶ Although the Cabinet recognized the fundamental problems involving these shoddy laboratories, the Cabinet never questioned whether Frasure Creek exercised due diligence in hiring these labs, nor did it attempt to calculate the financial benefit Frasure Creek incurred by hiring substandard labs and avoiding compliance with the law.

¹⁷ Transcript of Hearing at 34: 3-7, testimony by Bruce Scott, Energy and Env’t Cabinet v. Frasure Creek Mining, LLC, August 31, 2011.

¹⁸ Excluding the first in a matching set; the first matching DMRs were all from 2013.

a. Submission of False DMRs Constitutes a Failure to Submit and Maintain Accurate DMRs

Frasure Creek's filing of facially fraudulent, or otherwise false, DMRs equates to the failure to submit and maintain accurate DMRs with the KDNR. CWA §§ 308(A)(i)-(ii), (v), 33 U.S.C. §§ 1318(A)(i)-(ii), (v). *Sierra Club v. Simkins Industries, Inc.*, 847 F.2d 1109, 1111-1112 (4th Cir. 1988); *Menzel v. County Utilities Corporation*, 712 F.2d 91, 94 (4th Cir. 1983) ("a discharger that fails to file discharge-monitoring reports, or fails to file accurate reports, would be in violation of the provisions of its NPDES permit and would be subject to citizens' suits under 33 U.S.C. § 1365"). KPDES Permit No. KYG040000 states, "Discharge monitoring results obtained during the previous month shall be summarized for each outfall and reported using only KDOW approved Discharge Monitoring Report (DMR) forms and formats." Part I, Page I-15, D. Also, the permit details that "Test procedures for the analysis of pollutants shall conform to all regulations published pursuant to KRS 224," which includes 401 KAR 5:065 and incorporates 40 C.F.R. §§ 122.48 and 123.25. Part I, Page I-18, F.

The repeated submission of duplicate or conflicting DMRs, on its face, raises suspicion regarding the validity of data submitted in all of Frasure Creek's DMRs on file with the KDNR for the past seven years.¹⁹ Therefore, the Citizen Groups have a good faith belief that Frasure Creek has failed, and continues to fail, in its obligation to submit and maintain accurate DMRs in accordance with federal and state regulations and the terms and conditions of KPDES Permit No. KYG040000.

Failure to submit a DMR constitutes ongoing violations for each day for every outfall and every effluent parameter listed in the applicable CWA permit, which accrue civil penalties per day and per limit until the violations cease. *See Sierra Club v. Simkins Industries, Inc.*, 847 F.2d 1109, 1112 (4th Cir. 1988) *citing Chesapeake Bay Found., Inc. v. Gwaltney of Smithfield, Ltd.*, 791 F.2d 304, 313 (4th Cir. 1986) *vacated*, 484 U.S. 49, 108 S. Ct. 376, 98 L. Ed. 2d 306 (1987) (the court proclaims that daily penalties can be imposed).

b. Submission of False DMRs Constitutes a Violation of a Permit Condition

In addition to the above, a violation of a permit or permit condition issued under CWA § 402, 33 U.S.C. § 142, is a violation of an "effluent standard or limitation" in accordance with CWA § 505(f), 33 U.S.C. § 1365(f). *Sierra Club v. Simkins Industries, Inc.*, 847 F.2d 1109, 1111-1112 (4th Cir. 1988); *Menzel v. County Utilities Corporation*, 712 F.2d 91, 94 (4th Cir. 1983). KPDES Permit No. KYG040000 states, "Samples and measurements taken in accordance with the requirements of Part I pages I-1 through I-8 shall be representative of the volume and nature of the monitored discharge." Part I, Page I-15, D.

As it is the responsibility of every owner and operator to ensure compliance with CWA permits and permit conditions, and as failure to submit accurate DMRs is a violation of a

¹⁹ The Citizen Groups have reviewed DMRs submitted by Frasure Creek since 2008.

condition of KPDES Permit No. KYG040000, Frasure Creek is in a state of continuing violation of its permit. This constitutes ongoing violations for each day for every outfall and every effluent parameter listed in the applicable CWA permit, which accrues penalties per day and per limit until the violations cease.

c. Failure to Install, Use, and/or Maintain Monitoring Equipment

The repeated submission of duplicate DMRs that are fraudulent, or otherwise false, on their face raises suspicion regarding the validity of monitoring data found in all of Frasure Creek's DMRs on file with the KDNR for the past five years. Therefore, the Citizen Groups have a good faith belief that Frasure Creek has failed, and continues to fail, in its obligation to "install, use, and maintain . . . monitoring equipment or methods" to sample effluents in accordance with CWA § 308(A)(iii), 33 U.S.C. § 1318(A)(iii). Additionally, this violates Standard Conditions of KPDES Permit No. KYG04000, which states that, "It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods." KPDES Permit No. KYG04000, Part II, Page II-1.

As it is the responsibility of every owner and operator to install, use, and maintain its monitoring equipment in order to fulfill its obligations under the CWA, failure to do so equates to a violation. This constitutes ongoing violations for each day for every outfall and every effluent characteristic listed in the applicable CWA permit, which accrues penalties per day and per limit until the violations cease.

d. Failure to Accurately Sample and Test Effluent

The repeated submission of duplicate DMRs that are fraudulent, or otherwise false, on their face raises suspicion regarding the validity of sampling methods used by Frasure Creek in creating its DMRs on file with the KDNR for the past five years. Therefore, the Citizen Groups have a good faith belief that Frasure Creek has failed, and continues to fail, in its obligation to sample effluent accurately and in compliance with the CWA and its permit. CWA § 308(A)(iv), 33 U.S.C. § 1318(A)(iv). In addition to requiring owners and operators to use "sufficiently sensitive analytical methods" to monitor and sample effluent, KPDES Permit No. KYG04000 also requires that "samples and measurements be taken . . . [that] shall be representative of the volume and nature of the monitored discharge." KPDES Permit No. KYG04000, Part II, Page II-1; Part I, Page I-15, D.

It is the responsibility of every owner and operator to ensure that sampling and testing is conducted accurately in order to fulfill its obligations under the CWA. Failure to do so constitutes ongoing violations for each day for every outfall and every effluent parameter listed in the applicable CWA permit, which accrues penalties per day and per limit until the violations are remedied.

e. Self-Reported Exceedances of Permit Conditions

Under the General Permit, permit-holders are required to comply with both daily maximum and monthly average effluent limitations for specific parameters each month during any given reporting period. Permit No. KYG040000, AI No. 35050 at p. I-3.

A violation of a daily maximum effluent limitation is treated as a single violation. “Violations of ‘average’ limitations encompassing periods greater than one day are to be treated as a violation for each day of the time period involved.” *Chesapeake Bay Found., Inc. v. Gwaltney of Smithfield, Ltd.*, 791 F.2d 304, 317 (4th Cir. 1986). As such, a violation of a monthly average effluent limit is counted as one violation for each day of the month in which it occurred. However, when a permit holder violates both the monthly average and daily maximum effluent limitation for the discharge of a single pollutant at one outfall during the same month, the daily maximum effluent limitation violation is not counted as a separate violation. *Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc.*, 897 F.2d 1128, 1140 (11th Cir. 1990) (finding that because discharge of a single pollutant may be the cause of both daily and monthly violations, fining the violator twice may result in imposing two fines for the same illegal act).

DMRs on file with Kentucky Department of Natural Resources (“KDNR”) indicate Frasure Creek’s failures to comply with effluent limitations for specific parameters set forth in the General Permit. Permit No. KYG040000, AI No. 35050 at p. I-3. In total, Frasure Creek’s pollution discharges exceeded the numerical effluent limitations in its discharge permits at least 949 times in the first and second quarters of 2014. Each of these exceedances constitutes a violation of CWA § 301(a), 33 U.S.C. § 1311(a) and K.R.S. § 224.70-110.

IV. Lack of Diligent Prosecution against Ongoing Violations

The Cabinet has failed to prosecute Frasure Creek for its violations since entry of the Agreed Administrative Order of April 16, 2013.²⁰ Since entry of the Agreed Administrative Order, Frasure Creek has submitted at least 43 DMRs containing self-reported exceedance violations that the Cabinet has failed to enforce. Even more disturbing, the Cabinet has failed to prosecute any reporting violations.

After the entry of the Agreed Order, Frasure Creek submitted at least 210 duplicate or near-duplicate DMRs. What is more, for most of the near-duplicate DMRs, Frasure Creek failed to fully report sample results in the first report in the duplicate set. In requesting alternate limits for TSS, Iron and Manganese, Frasure Creek would simply report “NA”. While the General Permit does not set an upper limit on effluent for these parameters during monitoring periods with a qualifying precipitation event, permittees are still required to report sample results. *Frequently Asked Questions about the KPDES Coal General Permit Issued on August 1, 2009*, KENTUCKY DEPARTMENT FOR ENVIRONMENTAL PROTECTION 7 (Feb. 1, 2013), available at

²⁰ The Agreed Administrative Order purported to release Frasure Creek from liability for known violations and any unknown “like violations”.

<http://dep-enforcement.ky.gov/Documents/KPDESCoalGPFAQs020113.pdf>. *See supra*, note 11. These are obvious, blatant reporting violations and, yet, seem to have gone unnoticed by the Cabinet.

Many of these reporting violations occurred while Frasure Creek was in bankruptcy proceedings. While bankruptcy law may limit the ability of citizens to enforce the Clean Water Act, the Cabinet is under no such limitation.²¹ Indeed, the Cabinet's authority to proceed with regulatory enforcement during a permittee's pending bankruptcy is critical to preventing bankruptcy from becoming a "haven for wrongdoers." *In re First Alliance Mortg. Co.*, 264 B.R. 634, 645 (C.D. Cal. 2001) (citation omitted). The Cabinet had the right and opportunity to enforce Clean Water Act provisions, as well as Frasure Creek's specific permit conditions, and neglected to do so.

Additionally, the Cabinet has failed to enforce Frasure Creek's continuing violations post-bankruptcy, starting February 1, 2014. These violations include failure to accurately report data, failure to comply with monitoring and reporting procedures and failure to comply with permit limits.

Under CWA § 501(b)(1)(B), 33 U.S.C. § 1361(b)(1)(B), a government enforcement action for violations of the CWA may preclude a citizen enforcement action only if the action is diligently prosecuted. The Cabinet has failed to diligently prosecute the CWA violations subsequent to Frasure Creek's emergence from bankruptcy.

Based on the Cabinet's continued failure to enforce the appropriate federal statutes and hold Frasure Creek accountable for its permit violations, the Citizen Groups therefore provide this notice of intent to sue Frasure Creek Mining, LLC to enforce each of the violations occurring after its emergence from bankruptcy.

V. The Violations Alleged Are Ongoing

Citizen plaintiffs alleging ongoing and continuous CWA violations may satisfy the burden of proof by proving a "reasonable likelihood that a past polluter will continue to pollute in the future." *Gwaltney of Smithfield, Ltd.*, 791 F.2d at 317. The Citizen Groups believe that Frasure Creek's history of non-compliance with permit terms, in addition to the violations cited herein, creates a reasonable likelihood that the company's violations will continue in the future.

Based on Frasure Creek's apparent pattern and practice of repeatedly falsifying data on DMRs and violating effluent limitations by discharging pollutants in excess of permitted limits,

²¹ 11 U.S.C.A. § 362(b)(4) (West 2010) provides in relevant part that the filing of a bankruptcy petition does not stay "the commencement or continuation of an action or proceeding by a governmental unit ... to enforce such governmental unit's ... police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action proceeding by the governmental unit to enforce such governmental unit's ... police or regulatory power."

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the Citizen Groups reserve the right to allege additional CWA violations based on the same pattern of violations set forth herein, upon determining that such claims exist. The Citizen Groups take these violations very seriously and intend to enforce any and all of Frasure Creek's violations of the CWA.

The Citizen Groups believe that this letter provides sufficient information to place Frasure Creek on notice of their intent to sue and the grounds for a complaint. At the close of the 60-day notice period, unless significant progress is made in remedying and preventing these violations, the Citizen Groups will bring enforcement actions under CWA §§ 505(b) and 301(a), 33 U.S.C. §§ 1365(b), 1311(a). As noted in CWA § 309(d), 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and K.R.S. 224.99-010, violators of the CWA are subject to civil monetary penalties in amounts of up to \$37,500 per violation, per day. Under K.R.S. § 224.99-010, violators are subject to penalties in the amount of \$25,000 per day.

This letter is sent on behalf of: Appalachian Voices, Inc. (contact person: Mr. Tom Cormons, Executive Director, 171 Grand Boulevard, Boone, North Carolina 28607, Phone: (828) 262-1500); Waterkeeper Alliance, Inc. (contact person: Mr. Peter A. Harrison, 17 Battery Place, Suite 1329, New York, New York 10004, Phone: (212) 747-0622); Kentuckians For The Commonwealth, Inc. (contact person: Mr. Burt Lauderdale, Executive Director, P.O. Box 1450, London, Kentucky 40743, Phone: (606) 878-2161); Kentucky Riverkeeper, Inc. (contact person: Ms. Pat Banks, 300 Summit Street, Richmond, Kentucky 40475, Phone: (859) 622-3065); and Ms. Pat Banks, in her capacity as Kentucky Riverkeeper, 300 Summit Street, Richmond, Kentucky 40475, Phone: (859) 527-3334.

Appalachian Voices, Inc., Waterkeeper Alliance, Inc., Kentucky Riverkeeper, Inc., and Kentuckians For The Commonwealth, Inc. are represented in this matter by Karl S. Coplan and Daniel E. Estrin, Esqs., Pace Environmental Litigation Clinic, Inc., 78 North Broadway, White Plains, New York 10603, Phone: (914) 422-4343; Lauren H. Waterworth, Esq., Waterworth Law Offices, PLLC, P.O. Box 254, Boone, North Carolina, 28607, Phone: (828) 355-9750; and Mary Cromer, Esq., Appalachian Citizens' Law Center, Inc., 317 Main Street, Whitesburg, Kentucky 48158, Phone: (606) 633-3929.

Given Frasure Creek's history of reporting and pollution violations, there is simply no excuse for new violations. The Citizen Groups have always feared that the Cabinet's soft-pedal enforcement approach is not merely ineffective but that it is so meaningless as to actually encourage companies to violate. That Frasure Creek is in such blatant violation *again* only reinforces their fear. Because the Cabinet has proved itself so totally unwilling and/or unable to protect the citizens and the environment of Kentucky, the task falls to the citizens to protect themselves.

Frasure Creek is on Notice.

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If you wish to discuss the matters set forth in this Notice of Intent to Sue, please do not hesitate to contact the undersigned.

Very truly yours,



Daniel E. Estrin, Esq.

Karl S. Coplan, Esq.

Patrick J. Lanciotti, Legal Intern

Samantha E. Stahl, Legal Intern

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P.O Box 254

Boone, North Carolina 28607

(828) 719-1625

Attachment 1: Chart entitled "Pollution and Reporting Violations by Frasure Creek Mining, LLC".

Attachment 2: Tables identifying CWA violations herein alleged.

FRASURE CREEK, LLC & TRINITY COAL CORPORATION

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CC (via certified mail – return receipt requested):

Eric H. Holder Jr., Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC, 20530-0001

Gina McCarthy, Administrator
United States Environmental Protection Agency
Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Heather McTeer Toney, Regional Administrator
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Mail Code: 9T25
Atlanta, GA 30303

Peter T. Goodman, Director
Kentucky Department of Environmental Protection, Division of Water
200 Fair Oaks Lane
Fourth Floor
Frankfort, KY 40601

Steve Hohmann, Commissioner
Kentucky Department for Natural Resources
#2 Hudson Hollow
Frankfort, KY 40601

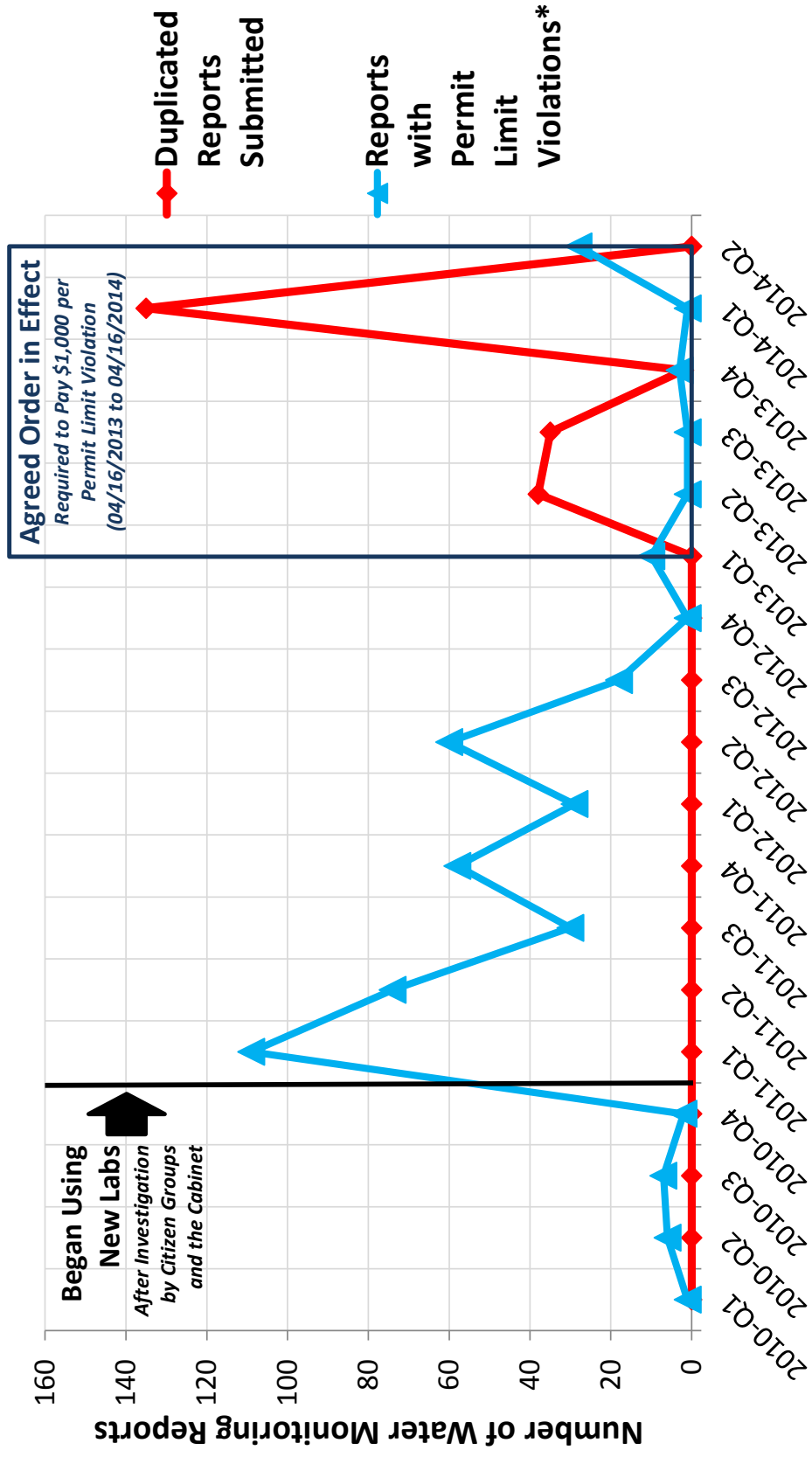
Dr. Len Peters, Secretary
Kentucky Energy and Environment Cabinet
500 Mero Street, 5th Floor, CPT
Frankfort, KY 40601

R. Bruce Scott, Commissioner
Department for Environmental Protection
Kentucky Energy and Environment Cabinet
300 Fair Oaks Lane
Frankfort, KY 40601

ATTACHMENT 1
(1 PAGE)

Pollution and Reporting Violations by Frasure Creek Mining, LLC

Comparison of Self Reported Violations and Duplicated Reports



*Self-reported permit limit violations for which no alternate limit request was submitted.

ATTACHMENT 2
(15 PAGES)

Alleged Clean Water Act Violations by Frasure Creek Mining, LLC.

Table 1. Duplicate DMRs submitted in Quarter 1, 2014

DSMRE #	KPDES #	Outfall #	Monitoring Period	Nature of Violation	Description of Violation
836-0326	KY0108111	1	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013-11/2013 repeated for 01/2014-02/2014
836-0391	KYG045764	1	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013-11/2013 repeated for 01/2014-02/2014
836-0391	KYG045764	7	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
836-0393/877-0209	KYG078271	EP-02/1	4 th Quarter 2013 1 st Quarter 2014	4 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014) ²²
836-0393	KYG078271	EP1	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 10/2013 repeated for 01/2014
836-0394	KYG046408	2	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 11/2013-12/2013 repeated for 02/2014-03/2014
836-0394	KYG046408	33	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 11/2013-12/2013 repeated for 02/2014-03/2014
836-0394	KYG046408	34	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
836-0395	KYG046409	11	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014

²² For one month during the quarter they reported different data on the two permits. Those two different sets were then repeated the next quarter.

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836-0396	KYG045938	1	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
836-0396	KYG045938	2	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
836-0396	KYG045938	19	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013 and 12/2013 repeated for 01/2014 and 03/2014
836-0396	KYG045938	26	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
836-0396	KYG045938	29	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
836-0396	KYG045938	40	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
836-0396	KYG045938	46	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
836-0396	KYG045938	47	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
836-0396	KYG045938	48	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
836-5582	KYG045752	1	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
836-5582	KYG045752	6	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)

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836-5582	KYG045752	15A	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
836-5583	KYG040512	1	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013- 11/2013 repeated for 01/2014-02/2014
836-5583	KYG040512	22	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013 and 12/2013 repeated for 01/2014 and 03/2014
836-5586	KYG045718	1	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013 and 12/2013 repeated for 01/2014 and 03/2014
836-8066	KY0053546	3	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
836-8071	KY0078271	1	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 11/2013- 12/2013 repeated for 02/2014-03/2014
836-8071	KY0078271	2	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
836-8072	KYG044819	2	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 11/2013 repeated for 02/2014
877-0177	KYG044922	1	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0177	KYG044922	2	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0177	KYG044922	13	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 11/2013- 12/2013 repeated for 02/2014-03/2014

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877-0177	KYG044922	14	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013 and 12/2013 repeated for 01/2014 and 03/2014
877-0177	KYG044922	15	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0200	KYG046314	P1	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0200	KYG046314	P2	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0200	KYG046314	P3	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMR Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0200	KYG046314	P4	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMR Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0200	KYG046314	P5	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMR Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0200	KYG046314	P7	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0200	KYG046314	P8	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 11/2013- 12/2013 repeated for 02/2014-03/2014
877-0200	KYG046314	P9	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 11/2013- 12/2013 repeated for 02/2014-03/2014
877-0209	KYG046282	8D	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014

877-0209	KYG046282	14	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0209	KYG046282	15B	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 10/2013 repeated for 01/2014
877-0209	KYG046282	15C	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
877-0209	KYG046282	16	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 10/2013 repeated for 01/2014
877-0210	KYG046469	DO-2	1 st -4 th Quarters 2013 1 st Quarter 2014	2 Duplicate DMRs Reported ²³	All data from 02/2013- 03/2013 repeated for the next four quarters (05/2013-06/2013, 08/2013-09/2013, 11/2013- 12/2013 and 02/2014- 03/2014)
898-0865	KYG045749	44	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
898-0865	KYG045749	55	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013- 11/2013 repeated for 01/2014-02/2014
898-0865	KYG045749	56	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013- 11/2013 repeated for 01/2014-02/2014
898-0865	KYG045749	59	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
898-0866	KYG046049	1	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)

²³ Citizen Groups give formal notice of the two duplications that occurred in the first quarter of 2014. However, this same set of data was duplicated six additional times in 2013.

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898-0866	KYG046049	3	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
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Table 2: Near-Duplicate DMRs submitted in Quarter 1, 2014

DSMRE #	KPDES #	Outfall #	Monitoring Period	Nature of Violation	Description of Violation
836-0326	KY0108111	1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave.
836-0391	KYG045764	1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave.
836-0391	KYG045764	8	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and max. and 0.2 mg/L for iron monthly ave. and max.
836-0393	KYG078271	EP1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 11/13 repeated for 02/14 except that the values of 82 mg/L and 154 mg/L were replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave. respectively ²⁴
836-0393	KYG078271	EP1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the values of 57 mg/L and 104 mg/L were replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave. respectively
836-0394/ 836-0395	KYG046408/ KYG046409	2	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 10/13 repeated for 01/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave., 0.2 mg/L for iron monthly ave. and 0.2 mg/L for manganese monthly ave.
836-0396	KYG045938	2	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 10/13 repeated for 01/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave.
836-0396	KYG045938	2	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 11/13 repeated for 02/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave.

²⁴ In most instances listed in Table 2, the first DMR in the duplicate set reported "NA" for TSS, iron, and/or manganese. The rows in this table that are highlighted in yellow represent DMRs for which Frasure Creek reported a numerical value (all of these numerical values are exceedances of permit limits) for TSS, iron and or manganese and then replaced only those values on the next DMR.

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836-0396	KYG045938	19	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 11/13 repeated for 02/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave.
836-0396	KYG045938	45	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 10/13 repeated for 01/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and max. and 0.2 mg/L for iron monthly ave. and max.
836-5582	KYG045752	15A	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 10/13 repeated for 01/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and max. and 0.2 mg/L for iron monthly ave. and max.
836-5582	KYG045752	15A	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 11/13 repeated for 02/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave.
836-5582	KYG045752	16	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and max.
836-5582	KYG045752	28A	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and max. and 0.2 mg/L for iron monthly ave. and max.
836-5583	KYG040512	1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave.
836-5586	KYG045718	1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave.
836-8071	KY0078271	1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 10/13 repeated for 01/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave.
836-8072	KYG044819	2	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave.

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877-0177	KYG044922	13	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 10/13 repeated for 01/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and 1.59 mg/L for manganese monthly ave.
877-0177	KYG044922	14	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 11/13 repeated for 02/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave.
877-0200	KYG046314	P8	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 10/13 repeated for 01/14 except that the value N/A was replaced with 30 mg/L for TSS monthly ave.
877-0209	KYG046282	15B	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 11/13 repeated for 02/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave.
877-0209	KYG046282	15B	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and max, 0.2 mg/L for iron monthly ave. and max. and 0.2 mg/L for manganese monthly ave. and max respectively
877-0209	KYG046282	15C	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 11/13 repeated for 02/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and max.
877-0209	KYG046282	16	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 11/13 repeated for 02/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and max.
877-0209	KYG046282	16	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the values of 112 mg/L, 214 mg/L, 3.4 mg/L and 6.61 mg/L were replaced with 10 mg/L for TSS monthly ave. and max. and 0.2 mg/L for iron monthly ave. and max. respectively
898-0865	KYG045749	45	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave.

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898-0865	KYG045749	55	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave.
898-0865	KYG045749	56	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave.

Table 3: Self-Reported Effluent Violations Submitted in Quarters 1 & 2, 2014

DSMRE #	KPDES #	Outfall #	Monitoring Period	Effluent Characteristic	Permit Limits	Reported Discharge	# of Violations
836-0391	KYG045764	1	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	38.5 mg/L (Monthly Ave. for 6/2014)	30
836-0394/836-0395	KYG046408/KYG046409	2	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	38 mg/L (Monthly Ave. for 5/2014)	31
836-0394/836-0395	KYG046408/KYG046409	33	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	41 mg/L (Monthly Ave. for 4/2014)	30
836-0394/836-0395	KYG046408/KYG046409	33	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	36 mg/L (Monthly Ave. for 5/2014)	31
836-0394/836-0395	KYG046408/KYG046409	34	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	38 mg/L (Monthly Ave. for 5/2014)	31
836-0396	KYG045938	29	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	53 mg/L (Monthly Ave. for 4/2014)	30
					70 mg/L (Daily Max.)	92 mg/L (Daily Max. for 4/2014)	
836-0396	KYG045938	47	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	36 mg/L (Monthly Ave. for 4/2014)	30
836-0396	KYG045938	47	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	94 mg/L (Monthly Ave. for 5/2014)	31
					70 mg/L (Daily Max.)	94 mg/L (Daily Max. for 5/2014)	

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836-5582	KYG045752	15A	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	2916 mg/L (Monthly Ave. for 5/2014)	31
					70 mg/L (Daily Max.)	5810 mg/L (Daily Max. for 5/2014)	
836-5582	KYG045752	15A	2 nd Quarter 2014	Total Iron	3 mg/L (Monthly Ave.)	116.06 mg/L (Monthly Ave. for 5/2014)	31
					4 mg/L (Daily Max.)	231.17 mg/L (Daily Max. for 5/2014)	
836-5582	KYG045752	15A	2 nd Quarter 2014	Total Manganese	2 mg/L (Monthly Ave.)	2.87 mg/L (Monthly Ave. for 5/2014)	31
					4 mg/L (Daily Max.)	5.54 mg/L (Daily Max. for 5/2014)	
836-8071	KY0078271	1	2 nd Quarter 2014	Total suspended Solids	35 mg/L (Monthly Ave.)	38 mg/L (Monthly Ave. for 4/2014)	30
860-0470	KYG041006	161	2 nd Quarter 2014	Total suspended Solids	35 mg/L (Monthly Ave.)	122 mg/L (Monthly Ave. for 5/2014)	31
					70 mg/L (Daily Max.)	230 mg/L (Daily Max. for 5/2014)	
860-0470	KYG041006	161	2 nd Quarter 2014	Total Iron	3.5 mg/L (Monthly Ave.)	12.35 mg/L (Monthly Ave. for 5/2014)	31
					4 mg/L (Daily Max.)	21.54 mg/L (Daily Max. for 5/2014)	

860-0470	KYG041006	161	2 nd Quarter 2014	Total Manganese	2 mg/L (Monthly Ave.)	10.15 mg/L (Monthly Ave. for 5/2014)	31
					4 mg/L (Daily Max.)	17.03 mg/L (Daily Max. for 5/2014)	
860-0470	KYG041006	162	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	138.6667m g/L (Monthly Ave. for 4/2014)	30
					70 mg/L (Daily Max.)	274 mg/L (Daily Max. for 4/2014)	
860-0470	KYG041006	162	2 nd Quarter 2014	Total Iron	3.5 mg/L (Monthly Ave.)	3.83 mg/L (Monthly Ave. for 4/2014)	30
					4 mg/L (Daily Max.)	6.37 mg/L (Daily Max. for 4/2014)	
860-0470	KYG041006	162	2 nd Quarter 2014	Total Manganese	2 mg/L (Monthly Ave.)	3.7 mg/L (Monthly Ave. for 4/2014)	30
					4 mg/L (Daily Max.)	7.26 mg/L (Daily Max. for 4/2014)	
860-0470	KYG041006	162	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	111 mg/L (Monthly Ave. for 5/2014)	31
					70 mg/L (Daily Max.)	212 mg/L (Daily Max. for 5/2014)	

860-0470	KYG041006	162	2 nd Quarter 2014	Total Iron	3.5 mg/L (Monthly Ave.)	4.48 mg/L (Monthly Ave. for 5/2014)	31
					4 mg/L (Daily Max.)	5.1 mg/L (Daily Max. for 5/2014)	
860-0470	KYG041006	162	2 nd Quarter 2014	Total Manganese	2 mg/L (Monthly Ave.)	11.55 mg/L (Monthly Ave. for 5/2014)	31
					4 mg/L (Daily Max.)	21.03 mg/L (Daily Max. for 5/2014)	
860-0470	KYG041006	162	2 nd Quarter 2014	Total Manganese	2 mg/L (Monthly Ave.)	6.21 mg/L (Monthly Ave. for 6/2014)	30
					4 mg/L (Daily Max.)	6.76 mg/L (Daily Max. for 6/2014)	
860-0470	KYG041006	163	2 nd Quarter 2014	Total Suspended Solids	35 mg/L (Monthly Ave.)	45 mg/L (Monthly Ave. for 4/2014)	30
860-0470	KYG041006	163	2 nd Quarter 2014	Total Manganese	2 mg/L (Monthly Ave.)	5.14 mg/L (Monthly Ave. for 5/2014)	31
					4 mg/L (Daily Max.)	7.35 mg/L (Daily Max. for 5/2014)	

860-0470	KYG041006	163	2 nd Quarter 2014	Total Manganese	2 mg/L (Monthly Ave.)	4.76 mg/L (Monthly Ave. for 6/2014)	30
					4 mg/L (Daily Max.)	4.79 mg/L (Daily Max. for 6/2014)	
860-0470	KYG041006	164	2 nd Quarter 2014	Total Iron	4 mg/L (Daily Max.)	5.58 mg/L (Daily Max. for 6/2014)	1