



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
8020 Veterans Memorial Dr Ste 110
Florence, KY 41042
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Rd
Scott Depot WV 25560

Re: Performance Audit Inspection
AI ID: 12527
AI Name: Frasure Creek Mining, LLC - West
Lick Mine
Activity ID: ENV20100001
KPDES Permit No.: KYG041006
DMRE Permit No.: 860-0470
Perry County, KY

Dear Mr. Woodring:

Attached for your information and records is a copy of the Performance Audit Inspection performed at Frasure Creek Mining, LLC on October 14, 2010.

As a result of the inspection, the Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 859-525-4923.

Sincerely,

Gretchen M. Bartley,
Environmental Scientist II
Division of Water

Enclosure
CC: Hazard Regional Office



Kentucky

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Rd
Scott Depot WV 25560

AI Name: Frasure Creek Mining LLC - West Lick Mine (Multiple)

AI ID: 12527

Activity ID: ENV20100001

County: Perry

Date(s) Violation(s) Observed: 10/14/2010 & 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000125270:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1), as in 40 C.F.R. 122.41(j)(2)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by S & S Water Monitoring personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a "bench sheet", identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the written notification. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000125270):

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1), as in 40 C.F.R. 122.41(I)(4)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report for outfalls 10, 101, 102 and 103. S&S Water Monitoring was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. S&S has also been submitting the DMRs to the Department of Natural Resources. It is critical the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000125270):

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1), as in 40 C.F.R. 122.41(e)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no "back-up" data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter "BDL" (Below Detection Limit) into the appropriate space for Acidity on the DMR form. The Acidity concentration observed by DOW was initially calculated to be 8.4 mg/l (BDL), however with the decimal point error, the actual concentration of Acidity was 84 mg/l. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000012527():

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2(1), as in 40 C.F.R. 122.41(a)]

Description of Non Compliance:

The facility has failed to comply with the effluent limitations contained in the permit. The Discharge Monitoring Reports (DMRs) submitted for this facility indicate that there were two (2) exceedences of permit limits for pH for Pond 10 during the third quarter of 2009: pH = 9.88 on 7/14/2009; and pH = 9.9 on 9/14/2009). The DMRs submitted for Pond 101 for the 2nd quarter of 2009 indicate an exceedence of the Monthly Average limit for Iron (5.75 mg/l; the effluent limit is 3.5 mg/l) and Daily Maximum limit for Iron (10.4 mg/l; the effluent limit is 4.0 mg/l) DOW's analysis of the split samples collected on 10/14/2010 resulted in exceedences of the Daily Maximum Concentration limit for Manganese for Ponds 10 and 113. The permitted daily maximum limit for Manganese is 4.0 mg/l. DEP's laboratory determined the Manganese concentration for Pond 10 to be 4.67 mg/l and 6.64 mg/l for Pond 113. The permittee's analysis of the discharge for Pond 10 sample split with DOW resulted in a Manganese concentration for Pond 10 of 3.83 mg/l.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must comply with effluent limitations and all conditions of the KPDES permit. DMRs must be properly completed and include all required information. Any exceedences or unusual conditions for that monitoring period shall be included in the comments section of the DMR. Frasure Creek Mining LLC shall submit a written Corrective Action Plan (CAP) describing measures it will take to eliminate any potential substandard discharge(s) from the Frasure Creek LLC - West Lick Mine facility. The plan shall describe actions it will take to mitigate the impact to the receiving stream (Hurricane Branch) from the discharge from Pond 113. The CAP shall be submitted to the undersigned by December 15, 2010. The written submittal shall document that the permittee complies with all requirements of its permit. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000125270:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1), as in 40 C.F.R. 122.41(j)(4)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW was not able to observe S&S Water Monitoring actually collecting samples at the Frasure Creek Mining - West Lick Mine. DOW did observe that S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe some samples were delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the CAP, the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

6 Violation Description for Subject Item AIOO00000125270:

No person shall directly, or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110].

Description of Non Compliance:

Pollutants from the permittee's facility have entered and contributed to the pollution of the waters of the Commonwealth. DOW and DNR field inspectors observed an oxidized orange coating of the stream bed for approximately 200 feet below the discharge point for Pond 113. Analysis of a sample of the discharge from Pond 113 collected by DOW on 10/14/2010 demonstrated an exceedence of permit limits for the daily maximum concentration of Manganese. Inspectors observed a significant yellowish discoloration of the water in Pond 113.

The remedial measure(s), and date(s) to be completed by are as follows:

Immediately cease all activity, which is contributing or has contributed to the pollution of the waters of the Commonwealth. By December 15, 2010, the permittee shall submit a corrective action plan, including a schedule of implementation to the undersigned describing the measures taken to address the non-compliance. [KRS 224.70-110]

7 Violation Description for Subject Item AIOO00000125270:

Surface waters shall not be aesthetically or otherwise degraded. [401 KAR 10:031 Section 2]

Description of Non Compliance:

The waters of the Commonwealth have been degraded by pollutants discharged from the permittee's facility. DOW and DNR field inspectors observed an oxidized orange coating of the stream bed for approximately 200 feet below the outfall Pond 113. Analysis of a sample of the discharge from Pond 113 collected on 10/14/2010 resulted in an exceedence of the permit limits for the daily maximum concentration of Manganese. A significant yellowish discoloration of the water in Pond 113 was observed.

The remedial measure(s), and date(s) to be completed by are as follows:

Immediately cease all discharges that are aesthetically or otherwise degrading the waters of the Commonwealth. The effluent must be brought into compliance so as to eliminate stream degradation. By December 15, 2010, the permittee shall submit a corrective action plan, including a schedule of implementation, to the undersigned describing the measures taken or to be taken to address the non-compliance. [401 KAR 10:031 Section 2]

8 Violation Description for Subject Item AIOO00000125270:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2, as in 40 C.F.R. 122.41(a)]

Description of Non Compliance:

The facility had no Best Management Practice plan (BMP) on site. The BMP plan is required to be kept on site so that it is available to site personnel to refer to as needed. Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall develop and maintain a BMP plan on site.

By December 15, 2010, the permittee shall submit a plan of action and a schedule of implementation to the undersigned describing the necessary measures taken to address the non-compliance with excursions from the permit limits and negative impact on the receiving stream.

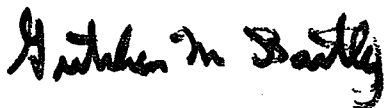
By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. The facility shall also provide the analytical results for sampling conducted in October 2010 and include the supporting documentation, chains of custody, bench sheets and lab analysis reports. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Florence Regional Office
8020 Veterans Memorial Dr Ste 110
Florence, KY 41042
859-525-4923 (8:00 AM – 4:30 PM)
Gretchen Bartley, Environmental Scientist II

Issued By:



Gretchen Bartley, Environmental Scientist II

Date: November 29, 2010

Issued By:



Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified mail: Return Receipt Requested
Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 12527
AI Name: Frasure Creek Mining LLC -
West Lick Mine (Multiple)
Activity ID: ENV20100006
Permit No. KYG040569
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

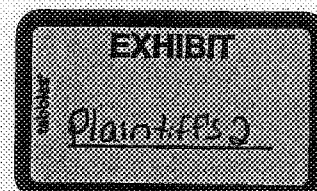
Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



The word "Kentucky" written in a stylized, cursive font with a horse head silhouette integrated into the lettering.

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC - West Lick Mine (Multiple) **AI ID:** 12527
Activity ID: ENV20100006 **County:** Perry **Enforcement Case ID:**
Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000125270:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are followed for the sampling and analysis of the parameters required for the KPDES self-monitoring

program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000012527():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000012527():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000125270:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIO000000125270:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

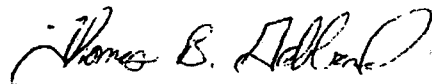
The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager



Issued By:

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 1151
AI Name: Frasure Creek Mining LLC (836-8061)
Activity ID: ENV20100002
Permit No. KY0078271
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

EXHIBIT

Plaintiff 53

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-8061) **AI ID:** 1151

Activity ID: ENV20100002

County: Floyd **Enforcement Case ID:**

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO000001151():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000011510:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000011510:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000011510):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO0000011510):

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

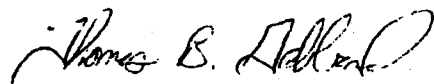
The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager



Issued By: _____

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 14714
AI Name: Frasure Creek Mining LLC (836-8062)
Activity ID: ENV20100002
Permit No. KYG044819
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



Kentucky

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-8062) **AI ID:** 14714 **Activity ID:** ENV20100002

County: Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000147140:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000147140):

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000147140):

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000147140:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000147140:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 12527
AI Name: Frasure Creek Mining LLC - West
Lick Mine (Multiple)
Activity ID: ENV20100007
Permit No. KYG042947
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

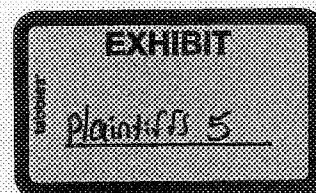
Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure

cc: Hazard Regional Office

Kentucky



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC - West Lick Mine (Multiple) **AI ID:** 12527
Activity ID: ENV20100007 **County:** Perry
Enforcement Case ID:
Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000125270):

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000012527():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000012527():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000125270:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000125270:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

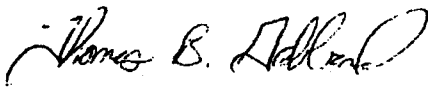
The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 12555
AI Name: Frasure Creek Mining LLC (897-0493)
Activity ID: ENV20100001
Permit No. KYG040644
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

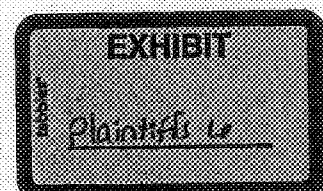
Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



Kentucky

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (897-0493) **AI ID:** 12555 **Activity ID:** ENV20100001

County: Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000012555():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000012555():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000012555():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000125550):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000125550:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 2531
AI Name: Frasure Creek Mining LLC (860-9014)
Activity ID: ENV20100002
Permit No. KY0101761
Knott County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

Kentucky

EXHIBIT

Plaintiffs 7

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (860-9014) **AI ID:** 2531 **Activity ID:** ENV20100002

County: Knott

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO000002531():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000025310:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000025310:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO000002531():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO0000025310:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 15554
AI Name: Frasure Creek Mining LLC (898-0810)
Activity ID: ENV20100002
Permit No. KYG045749
Pike County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

EXHIBIT

Plaintiff

Kentucky

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (898-0810) **AI ID:** 15554 **Activity ID:** ENV20100002

County: Pike

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000015554():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000015554():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000015554():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000155540):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIO00000155540:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 70589
AI Name: Frasure Creek Mining LLC (898-0811)
Activity ID: ENV20100002
Permit No. KYG046049
Pike County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

Kentucky

EXHIBIT

Plaintiff 9

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (898-0811) **AI ID:** 70589 **Activity ID:** ENV20100002

County: Pike

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000070589():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000705890:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000705890:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000070589():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIO000000705890:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.


The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 106061
AI Name: Frasure Creek Mining LLC (897-0499)
Activity ID: ENV20100002
Permit No. KYG044971
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (897-0499) **AI ID:** 106061 **Activity ID:** ENV20100002

County: Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIO000001060610:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO000001060610):

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO000001060610):

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO000001060610):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO000001060610:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

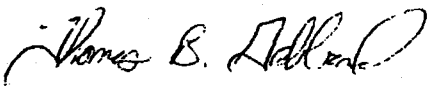
The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 80027
AI Name: Frasure Creek Mining LLC -
Tiptop Surface Mine (897-0503)
Activity ID: ENV20100002
Permit No. KYG045676
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

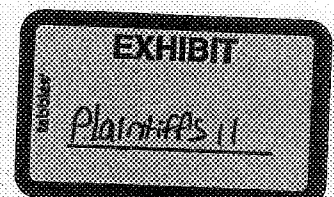
Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC - Tiptop Surface Mine (897-0503) **AI ID:** 80027

Activity ID: ENV20100002 **County:** Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000800270):

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000800270:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000800270:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000800270):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000800270:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

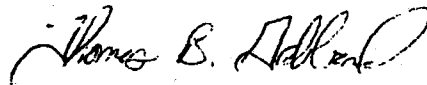
By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: _____



Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 99512
AI Name: Frasure Creek Mining LLC (877-0182)
Activity ID: ENV20100002
Permit No. KYG046282
Magoffin County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

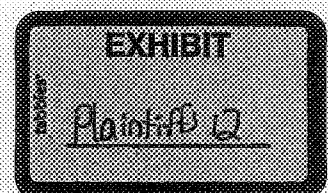
Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (877-0182) **AI ID:** 99512 **Activity ID:** ENV20100002

County: Magoffin

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000099512Q):

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000099512():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000099512():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000995120):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000995120:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 96779
AI Name: Frasure Creek Mining LLC (836-0341)
Activity ID: ENV20100001
Permit No. KYG046237
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-0341) **AI ID:** 96779 **Activity ID:** ENV20100001

County: Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000967790:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000096779():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000096779():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000096779():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000967790:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:


By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: _____



Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 105993
AI Name: Frasure Creek Mining LLC (836-0345)
Activity ID: ENV20100001
Permit No. KYG045764
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

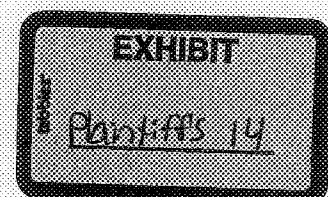
Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



Kentucky

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-0345) **AI ID:** 105993 **Activity ID:** ENV20100001

County: Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000105993():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000105993():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000105993():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000105993():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO000001059930:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

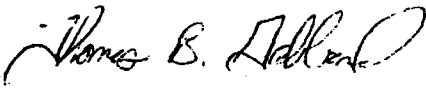
The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 105994
AI Name: Frasure Creek Mining LLC (836-0346)
Activity ID: ENV20100001
Permit No. KYG045996
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

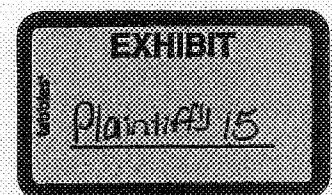
Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



Kentucky

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-0346) **AI ID:** 105994 **Activity ID:** ENV20100001

County: Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000105994():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO000001059940:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO000001059940:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO000001059940:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO000001059940:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.


The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 12507
AI Name: Frasure Creek Mining LLC (836-
5526)
Activity ID: ENV20100001
Permit No. KYG040512
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

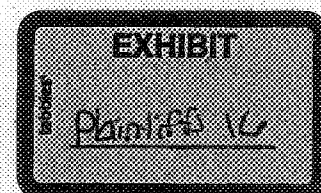
Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in black ink that reads "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



The word "Kentucky" written in a stylized, cursive font with a horse head silhouette integrated into the letter 'y'.

An Equal Opportunity Employer M/F/D

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-5526) **AI ID:** 12507 **Activity ID:** ENV20100001

County: Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000125070:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000012507():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000012507():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000125070:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000125070:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

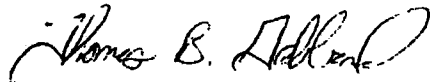
By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By:



Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 15557
AI Name: Frasure Creek Mining LLC (836-5524)
Activity ID: ENV20100001
Permit No. KYG045752
Floyd County, Kentucky

Dear Mr. Woodring:

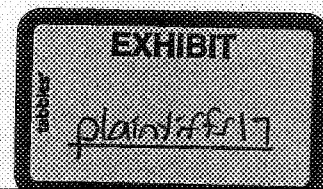
The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-5524) **AI ID:** 15557 **Activity ID:** ENV20100001

County: Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIO000000155570:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits: A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000155570:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000155570:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000155570):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000155570:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 15525
AI Name: Frasure Creek Mining LLC (836-
5525)
Activity ID: ENV20100001
Permit No. KYG045718
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



Kentucky

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-5525) **AI ID:** 15525 **Activity ID:** ENV20100001

County: Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000015525():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000155250:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000155250:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000015525():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000155250:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 12959
AI Name: Frasure Creek Mining LLC (836-5531)
Activity ID: ENV20100001
Permit No. KYG041754
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-5531) **AI ID:** 12959 **Activity ID:** ENV20100001

County: Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIO00000012959):

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000129590:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000125270:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000129590:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000129590:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 84110
AI Name: Frasure Creek Mining LLC (836-0347)
Activity ID: ENV20100001
Permit No. KYG045938
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

EXHIBIT

Plaintiff's 20

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-0347) **AI ID:** 84110 **Activity ID:** ENV20100001

County: Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIO0000084110():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000084110Q:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000084110Q:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000084110):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIO00000841100:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 97171
AI Name: Frasure Creek Mining LLC (836-0326)
Activity ID: ENV20100001
Permit No. KY0108111
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

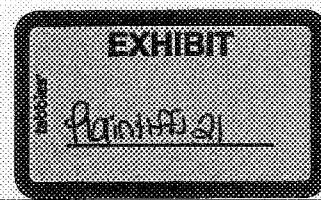
Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

Kentucky



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-0326) **AI ID:** 97171 **Activity ID:** ENV20100001

County: Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000971710:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000097171Q:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000097171Q:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000097171():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIO00000971710:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

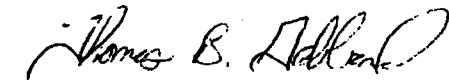
By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By:



Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 105558
AI Name: Frasure Creek Mining LLC (836-0343)
Activity ID: ENV20100001
Permit No. KYG046409
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



The logo for the state of Kentucky, featuring the word "Kentucky" in a stylized, cursive font with a horse head silhouette integrated into the lettering.

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-0343) **AI ID:** 105558 **Activity ID:** ENV20100001
County: Floyd
Enforcement Case ID:
Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIO000000105558():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO000001055580:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO000001055580:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO000001055580):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO000001055580:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

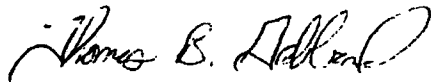
By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By:



Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 82726
AI Name: Frasure Creek Mining LLC (897-
8049)
Activity ID: ENV20100001
Permit No. KYG041311
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

EXHIBIT

23

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (897-8049) **AI ID:** 82726 **Activity ID:** ENV20100001

County: Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000082726():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000827260:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000827260:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000827260:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000827260:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 81733
AI Name: Frasure Creek Mining LLC (813-0328)
Activity ID: ENV20100001
Permit No. KYG045943
Breathitt County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (813-0328) **AI ID:** 81733 **Activity ID:** ENV20100001

County: Breathitt

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000081733Q:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000081733():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000081733():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000081733():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000817330:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 3430
AI Name: Frasure Creek Mining LLC (897-
8048)
Activity ID: ENV20100001
Permit No. KY0046981
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

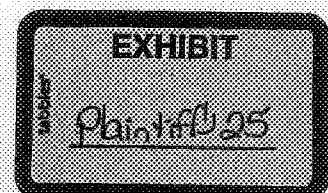
Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

Kentucky



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (897-8048) **AI ID:** 3430 **Activity ID:** ENV20100001

County: Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000034300:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO000003430():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO000003430():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO000003430():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO0000034300):

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager



Issued By:

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 12542
AI Name: Frasure Creek Mining LLC (897-
0492)
Activity ID: ENV20100001
Permit No. KYG040609
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

EXHIBIT

plain 11/30/26

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (897-0492) **AI ID:** 12542 **Activity ID:** ENV20100001

County: Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000125420:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000125420:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000125420:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000012542():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO0000012542():

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

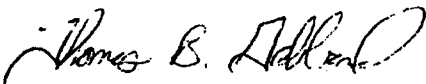
By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By:



Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 13664
AI Name: Frasure Creek Mining LLC (897-
0495)
Activity ID: ENV20100001
Permit No. KYG043231
Perry County, Kentucky

Dear Mr. Woodring:

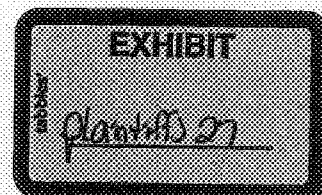
The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (897-0495) **AI ID:** 13664 **Activity ID:** ENV20100001

County: Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000013664():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000013664():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000013664():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000136640:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000136640:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 13426
AI Name: Frasure Creek Mining LLC (898-0496)
Activity ID: ENV20100001
Permit No. KYG044054
Pike County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

EXHIBIT

Plaintiff's

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (898-0496) **AI ID:** 13426 **Activity ID:** ENV20100001

County: Pike

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000013426():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000134260):

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000134260):

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.
[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000134260:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000134260:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 82764
AI Name: Frasure Creek Mining LLC (897-0497)
Activity ID: ENV20100001
Permit No. KYG044510
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (897-0497) **AI ID:** 82764 **Activity ID:** ENV20100001

County: Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000827640:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000827640:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000827640:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000827640):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000827640:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

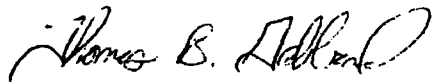
By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By:



Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 100715
AI Name: Frasure Creek Mining LLC (877-0177)
Activity ID: ENV20100001
Permit No. KYG044922
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

Kentucky



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (877-0177) **AI ID:** 100715 **Activity ID:** ENV20100001
County: Floyd
Enforcement Case ID:
Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO000001007150:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO000001007150:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO000001007150:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO000001007150):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO000001007150:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 107241
AI Name: Frasure Creek Mining LLC (877-0184)
Activity ID: ENV20100001
Permit No. KYG046469
Magoffin County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

EXHIBIT

Plaintiff 31

Kentucky

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (877-0184) **AI ID:** 107241 **Activity ID:** ENV20100001
County: Magoffin
Enforcement Case ID:
Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000107241():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO00000107241():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO00000107241():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO000001072410):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO000001072410:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 80884
AI Name: Frasure Creek Mining LLC (877-0200)
Activity ID: ENV20100001
Permit No. KYG046314
Magoffin County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

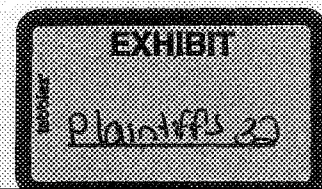
Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (877-0200) **AI ID:** 80884 **Activity ID:** ENV20100001

County: Magoffin

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000080884):

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000080884():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000080884():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000080884():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000808840:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

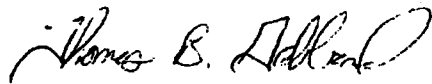
By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: _____



Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 1128
AI Name: Frasure Creek Mining LLC -
Banner Prep Plant (836-8066)
Activity ID: ENV20100001
Permit No. KY0053546
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



The word "Kentucky" written in a stylized, cursive font with a horse head silhouette integrated into the lettering.

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC - Banner Prep Plant (836-8066) **AI ID:** 1128

Activity ID: ENV20100001 **County:** Floyd

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO000001128():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000011280:

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000011280:

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000011280:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO0000011280:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 12337
AI Name: Frasure Creek Mining LLC (860-0467)
Activity ID: ENV20100001
Permit No. KYG040112
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



Kentucky

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (860-0467) **AI ID:** 12337 **Activity ID:** ENV20100001

County: Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000123370:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000012337():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000012337():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000012337():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000123370:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:


By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: _____


Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 12322
AI Name: Frasure Creek Mining LLC (813-0321)
Activity ID: ENV20100001
Permit No. KYG040075
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas B. Gabbard".

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (813-0321) **AI ID:** 12322 **Activity ID:** ENV20100001

County: Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000012322():

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000012322():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000012322():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO0000012322():

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO00000123220:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

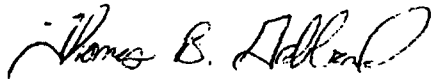
The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager



Issued By: _____

Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 82737
AI Name: Frasure Creek Mining LLC (897-
0494)
Activity ID: ENV20100001
Permit No. KYG042269
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

EXHIBIT

planta's 36

Kentucky

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (897-0494) **AI ID:** 82737 **Activity ID:** ENV20100001

County: Perry

Enforcement Case ID:

Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000827370:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000082737():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000082737():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000827370:

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIO00000827370:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

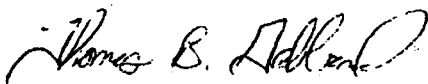
By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: _____



Mr. Thomas B. Gabbard, Environmental Control Manager

Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI ID: 105557
AI Name: Frasure Creek Mining LLC (836-0342)
Activity ID: ENV20100001
Permit No. KYG046408
Floyd County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

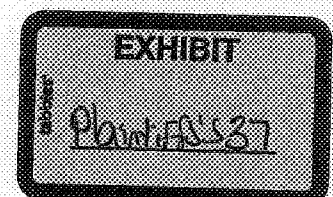
Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure
cc: Hazard Regional Office

Kentucky



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC (836-0342) **AI ID:** 105557 **Activity ID:** ENV20100001
County: Floyd
Enforcement Case ID:
Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO000001055570:

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO000001055570):

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO000001055570):

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures. [401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO000001055570):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO000001055570):

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail

Certified/Registered # 7008 1830 0003 6515 3060



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
www.kentucky.gov

November 29, 2010

Certified No. 7008 1830 0003 6515 3060
Return Receipt Requested

Mr. Kenneth G. Woodring, President
Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

Re: Notice of Violation
AI Name: Frasure Creek Mining LLC -
West Lick Mine (Multiple)
Activity ID: ENV20100009
Permit No. KYG040567]
Perry County, Kentucky

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 502-564-3410.

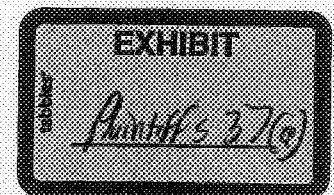
Sincerely,

Mr. Thomas B. Gabbard, Manager
Compliance & Technical Assistance Branch
Division of Water

Enclosure

cc: Hazard Regional Office

Kentucky



COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Frasure Creek Mining, LLC
4978 Teays Valley Road
Scott Depot, West Virginia 25560

AI Name: Frasure Creek Mining LLC - West Lick Mine (Multiple) **AI ID:** 12527
Activity ID: ENV20100009 **County:** Perry
Enforcement Case ID:
Date(s) Violation(s) Observed: 10/15/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO00000125270):

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to maintain required records. The specific areas of deficiency are as follows: Samples are taken from the permitted outfalls by permittee's contract lab, S & S Water Monitoring, personnel. Although S & S does have a "Sample Custody Sheet" they do not appear to be used consistently, however the samples are identified by a sample tag that includes the date of the sample, location, analysis to be run and preservative, where applicable. The sample tag has a place for the name of the sampler, but the completed tags we observed did not include the name of the sampler or the time the sample was collected. The sample tags are discarded along with the sample bottle after testing is completed. The "Sample Custody Sheet" does not record when the sample was collected; the name(s) of those who received the sample(s) in the lab, or the time and date the sample was received in the lab. A "Pond Analysis Lab Sheet" apparently used by S&S Water Monitoring as a bench sheet, identifies the date the sample was taken, the name and permit number of the mining facility, the sample location (outfall) and the sample results for both sample dates for each outfall, but does not contain the name of the sampler taking the field readings or the name of the analyst(s). The sheet does not include the date and time when the analysis was performed or any of the documentation (calculations) required to verify the sample results. The "Pond Analysis Lab Sheet" is essentially a working or draft copy of the DMR form. Neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis. DOW found no documentation of calibration, maintenance records, the use of duplicates of spikes or other QC measures.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee shall comply with all recordkeeping requirements specified in the permit. Proper sampling procedures shall be followed by verifying the proper chains of custody, laboratory bench sheets, laboratory logs and other pertinent Quality Assurance and Quality Control protocols are

followed for the sampling and analysis of the parameters required for the KPDES self-monitoring program. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. A copy of the lab Standard Operating Procedures plan (SOP), proper chains of custody forms, bench sheets and the associated analytical data for sampling and analysis performed for the month of October 2010 shall be submitted with the corrective action plan. [401 KAR 5:065 Section 2(1)]

2 Violation Description for Subject Item AIOO0000012527():

Monitoring results shall be reported at the intervals specified in the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to submit monitoring results at intervals specified in the permit and to provide an authorized signature on the Discharge Monitoring Report. The permittee's contract lab was collecting the samples in the field, doing both the field and laboratory analysis and completing and signing the DMRs. The contract lab has also been submitting the DMRs to the Department of Natural Resources. It is critical that the permittee be fully aware of the data contained on the DMRs, and the supporting lab data that is used in preparing the DMRs.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must report monitoring results at the intervals specified in the permit. The DMRs are to be signed by a responsible corporate officer for the permittee or by a duly authorized representative of the permittee. The permittee must ensure the data submitted on the Discharge Monitoring Report (DMR) is accurate. If the permittee chooses a duly authorized representative to sign the DMRs, the permittee shall immediately submit a letter of authorization, including proper documentation, to EECPPC/DEP/DOW. [401 KAR 5:065 Section 2(1)]

3 Violation Description for Subject Item AIOO0000012527():

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

Laboratory controls are deficient due to the lack of adequate quality assurance and quality control (QA/QC) procedures. Although most of the required sampling parameters appear to be performed by approved methodologies, there is a lack of QA/QC because there is no back-up data to support the information contained on the DMRs. Deficiencies include no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual, etc. It appears the contract lab is using an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis. The facility DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008, 2009 and 2010. If the value resulting is below the detection limit, the correct way of reporting is to enter BDL (Below Detection Limit) into the appropriate space for Acidity on the DMR form. These deficiencies are addressed in greater detail in the attached lab inspection report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. The permittee shall verify their contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis. By December 15, 2010, the permittee shall submit a corrective action plan to the undersigned that the permittee complies with all requirements of its permit and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR permits. The permittee shall prepare and submit with the corrective action plan a copy of a chain of custody form, bench sheet, and maintenance, reagent, calibration and precipitation logs to be used, and Standard Operating Procedures to be used. Each document submitted shall include the following information, as appropriate:

The date, exact place, and time of sampling or measurements;

The individual(s) who performed the sampling or measurements;

The date(s) analyses were performed;

The individual(s) who performed the analyses;

The analytical techniques or methods used; and

The results of such analyses.

These documents may include, and are not limited to, chains-of-custody, bench sheets, maintenance, reagent, calibration, and precipitation logs, and standard operating procedures.

[401 KAR 5:065 Section 2(1)]

4 Violation Description for Subject Item AIOO00000125270):

Duty to comply. Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless another method is required under 40 CFR subchapters N and O. [401 KAR 5:065 Section 2(1)]

Description of Non Compliance:

The facility has failed to monitor permit parameters utilizing approved test procedures. DOW did observe S&S used the proper sample bottles and preservatives. There was no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives. DOW did observe that some samples delivered to the lab on 10/14/2010 (client coal company unknown) were contained in a plastic shopping bag, with no means of refrigeration. The samples were placed immediately into the refrigerator at the lab. The refrigerator at the lab did not contain a thermometer, and there was no temperature log for the refrigerator. DOW has provided the lab with a sample copy of a temperature log for the refrigerator. Deficiencies related to the chains of custody and lab bench/record sheets were such that it was not possible to determine if samples were being analyzed within the required holding times. It appeared the lab used an unapproved test methodology to analyze for Total Suspended Solids. The lab sometimes uses the unapproved Hach test kit method instead of the gravimetric method approved through Std. Methods. The deficiencies with the laboratory are discussed in greater detail in the attached Laboratory Performance Audit Report.

The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O. The permittee shall submit a written notification to the undersigned that the permittee complies with all requirements of its permit. Along with the Corrective Action Plan (CAP), the permittee shall also provide a copy of the Standard Operating Procedure (SOP) plan utilized by their lab facility along with an outline of the QA/QC protocols being implemented by the laboratory. The CAP and

supporting documents shall be submitted by December 15, 2010. [401 KAR 5:065 Section 2(1)]

5 Violation Description for Subject Item AIOO0000012527():

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [401 KAR 5:065 Section 2]

Description of Non Compliance:

Frasure Creek Mining submitted a Quality Assurance Project Plan (QAPP) and a Standard Operating Procedures plan for lab analysis to DOW on August 11, 2010. The QAPP and SOP referenced S & S Water Monitoring as being a part of the QAPP and SOP, yet when DOW conducted the Performance Audit Inspection (PAI), S & S personnel, reported that they did not have a SOP plan or manual.

The remedial measure(s), and date(s) to be completed by are as follows:

By December 15, 2010, the permittee shall submit a corrective action plan the permittee is complying with all requirements of its permit, and will maintain adequate records and supporting documentation for the time period required by the KPDES and DNR Permits. The supporting documentation shall include a copy of the Standard Operating Procedure (SOP) plan utilized by the contract lab along with an outline of the QA/QC protocols being implemented by the lab. [401 KAR 5:065 Section 2]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Division of Water
Compliance & Technical Assistance Branch
200 Fair Oaks Lane, 4th Floor
Frankfort, Kentucky 40601
502-564-3410 (8:00 AM – 4:30 PM)
Mr. Thomas B. Gabbard, Environmental Control Manager

Issued By: 

Mr. Thomas B. Gabbard, Environmental Control Manager
Date: November 29, 2010

How Delivered: Certified Mail Certified/Registered # 7008 1830 0003 6515 3060

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF ENFORCEMENT
300 FAIR OAKS LANE
FRANKFORT KENTUCKY 40601
www.kentucky.gov

November 29, 2010

Hand Delivered

Mr. Kenneth G. Woodring, President
Frasure Creek Mining LLC
4978 Teays Valley Road
Scott Depot, WV 25560

Re: Notice of Violation
AI ID: 12527 - Multiple
AI Name: Frasure Creek Mining LLC
Activity ID: ENV20100008
KPDES Permits: Multiple
DSMRE Permits: Multiple

Dear Mr. Woodring:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your Frasure Creek mining facilities. Please review this Notice of Violation carefully. The enclosed Attachment A regards all permits (DMRs) reviewed for Frasure Creek Mining LLC.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at (502) 564-2150 extension 266.

Sincerely,

A handwritten signature in cursive script that reads "Lori E. Conway".

Lori E. Conway
Environmental Enforcement Specialist
Compliance and Operations Branch
Division of Enforcement

Enclosures

Kentucky



COMMONWEALTH OF KENTUCKY
ENERGY and ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Enforcement

NOTICE OF VIOLATION

To: Mr. Kenneth G. Woodring, President
Frasure Creek Mining LLC
4978 Teays Valley Road
Scott Depot, WV 25560

AI Name: Frasure Creek Mining LLC AI ID: 12527 – Multiple Activity ID: ENV20100008

County: Multiple

KPDES Permits /DSMRE Permits:

KYG040569 (860-0469/0424), KY0078271 (836-8061), KYG044819 (836-8062), KYG042947 (860-0466), KYG040567 (860-0468), KYG040644 (897-0493), KYG041006 (860-0470), KY0101761 (860-9014), KYG045749 (898-0810), KYG046049 (898-8011), KYG044971 (897-0499), KYG045676 (897-0503), KYG046282 (877-0182), KYG046237 (836-0341), KYG045764 (836-0345), KYG045996 (836-0346/0301), KYG040512 (836-5526/5441), KYG045752 (836-5524/5423), KYG045718 (836-5525/5437), KYG041754 (836-5531), KYG045938 (836-0347/0303), KY0108111 (836-0326), KYG046409 (836-0343), KYG041311 (897-8049/8047), KYG045943 (813-0328/0300), KY0046981 (897-8048/8044), KYG040609 (897-0492), KYG043231 (897-0495), KYG044054 (897-0496/0471), KYG044510 (897-0497/0472), KYG044922 (877-0177/0165), KYG046314 (877-0200/0173), KY0053546 (836-8066/8059), KYG040112 (860-0467), KYG040075 (813-0321), KYG046408 (836-0342), KYG042269 (897-0494)

Date(s) Violation(s) Observed: 11/23/2010

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item AIOO0000012527():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

Frasure Creek Mining violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(I)(4)(i), by failing to accurately report monitoring results on Discharge Monitoring Reports (DMRs). A comparison of laboratory analysis bench sheets (LABSs) and the DMRs found discrepancies between data reported on the LABSs and the data entered on the DMRs. In all instances, a violation was reported on the DMR when the LABS indicated that analysis result was in compliance. Below are the specific findings:

- KYG045676, Outfall SS5, May 2009: The LABS reported Total Suspended Solids (TSS) as 6.1 mg/L monthly average and 11.2 mg/L daily maximum. The DMR reported TSS as 7 mg/L monthly average and 112 mg/L daily maximum.
- KYG044971, Outfall 118, April 2010: The LABS reported Total Recoverable Iron (TRFe) as 1.45 mg/L daily maximum. The DMR reported a TRFe as 145 mg/L daily maximum.
- KYG044971, Outfall 104 (123R), June 2010: The LABS reported Total Recoverable Iron (TRFe) as 0.07 mg/L daily maximum. The DMR reported TRFe as 7 mg/L daily maximum.

- KYG040567, Outfall 104 (123R), April 2010: The LABS reported Total Recoverable Iron (TRFe) as 0.07 mg/L daily maximum. The DMR reported TRFe as 7 mg/L daily maximum.
- KYG040567, Outfall 10, July 2009 and September 2009: The LABS reported pH as a minimum of 6.88 s.u. for July 2009 and 6.90 s.u. for September 2009. The DMRs reported pH as a minimum of 9.88 s.u. for July 2009 and 9.90 s.u. for September 2009.
- KYG042947, Outfall 10, July 2009 and September 2009: The LABS reported pH as a minimum of 6.88 s.u. for July 2009 and 6.90 s.u. for September 2009. The DMRs reported pH as a minimum of 9.88 s.u. for July 2009 and 9.90 s.u. for September 2009.
- KYG040569, Outfall 4, March 2009: The LABS reported Total Recoverable Manganese (TRMn) as 1.66 mg/L daily maximum. The DMR reported TMn as 166 mg/L daily maximum.
- KYG040569, Outfall 6, April 2010: The LABS reported Total Recoverable Manganese (TRMn) as 1.25 mg/L daily maximum. The DMR reported TMn as 125 mg/L daily maximum.
- KYG040569, Outfall 142 (3), March 2010: The LABS reported Total Recoverable Manganese (TRMn) as 1.16 mg/L daily maximum. The DMR reported TMn as 116 mg/L daily maximum.
- KYG040569, Outfall 9, June 2010: The LABS reported Total Recoverable Iron (TRFe) as 1.40 mg/L daily maximum. The DMR reported TRFe as 140 mg/L daily maximum.

The remedial measure(s), and date(s) to be completed by are as follows:

Frasure Creek Mining, LLC shall comply with the terms and conditions of their KPDES Permits.
[KRS 224.70-110]

2 Violation Description for Subject Item AIOO0000012527():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

Frasure Creek Mining violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(a), by failing to submit the required monitoring data for conductivity on the Discharge Monitoring Reports (DMRs) for the months of August 2009 and September 2009 as required by the KPDES permit. Frasure Creek Mining is required to monitor and report conductivity for each outfall each month on a Discharge Monitoring Report. This violation is being cited for all outfalls of all the KPDES permits listed in Attachment A, as well as the addition time periods listed below.

- KY0046981: Outfalls Pond 1 and Damn 1 (sic) (4th Qtr 2009)
- KYG044510: Outfall 2 (October, November and December 2009)

The remedial measure(s), and date(s) to be completed by are as follows:

Frasure Creek Mining, LLC shall comply with the terms and conditions of their KPDES Permits.
[KRS 224.70-110]

3 Violation Description for Subject Item AIOO0000012527():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

Frasure Creek Mining violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(k) by failing to comply with the signatory requirements for the DMR certification as specified in 40 CFR 122.22(b). Frasure Creek Mining's Discharge Monitoring Reports (DMRs) were signed by Jody Salisbury of S&S Water Monitoring, Inc. DMRs shall be signed by a corporate officer or designee having responsibility for the overall operation of the regulated facility. This violation is being cited for all outfalls of all the KPDES permits listed in Attachment A.

b) The KDEP discovered that Frasure Creek Mining was in violation of the DMR signatory requirements by omitting the signature on the DMRs for the following permits and time period:

- KYG040609: 1st & 2nd Quarters of 2010.
- KYG040644: 1st & 2nd Quarters of 2010.

The remedial measure(s), and date(s) to be completed by are as follows:

Frasure Creek Mining, LLC shall comply with the terms and conditions of their KPDES Permits. [KRS 224.70-110]

4 Violation Description for Subject Item AIOO0000012527():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

Frasure Creek Mining violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(a), by failing to report monitoring data required by KPDES Permit No. KYG045749 on the Discharge Monitoring Reports for April 2010, May 2010, and June 2010 for Outfalls 045, 060, 061, and 062. Missing parameters included flow, total suspended solids, total recoverable manganese, conductivity, acidity, alkalinity, and pH. Frasure Creek failed to report total recoverable iron for Outfall 044 for April 2010.

The remedial measure(s), and date(s) to be completed by are as follows:

Frasure Creek Mining, LLC shall comply with the terms and conditions of their KPDES Permits. [KRS 224.70-110]

5 Violation Description for Subject Item AIOO0000012527():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the

pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

Frasure Creek Mining violated 401 KAR 5:065, Section 2(1), which cites 40 CFR 122.41(a), by failing to submit Discharge Monitoring Reports (DMRs) for the following permits, outfalls, and time periods:

- KYG045749: Outfall 44: May 2010 and June 2010.
- KYG044819: Outfalls OB-1, OB-3, OB-4: January 2010 and February 2010.
- KYG040569: Outfall 7: 2nd Quarter (April through June) 2010.
- KYG041311: Outfall SB-1: All 12 months (January through December) of 2008, 4th Quarter (October through December) of 2009.
- KYG045943: Outfall 102: All 12 months (January through December) of 2009.
- KY0046981: Outfall Pond-1, Damn-1: 2nd & 3rd Quarters (April through September) of 2009.
- KYG040609: Outfalls BB-1, BB-2: 2nd & 3rd Quarters (April through September) of 2009.
- KYG040644: Outfall BB-48: 2nd & 3rd Quarters (April through September) of 2009.
- KYG043231: Outfalls BB-9, BB-13, BB-21, 3,4: 2nd & 3rd Quarters (April through September) of 2009.
- KYG044054: Outfalls 10, RF-1, WP-1: 2nd & 3rd Quarters (April through September) of 2009.
- KYG044510: Outfalls 1,2,3, BB-2, WP-1: 2nd & 3rd Quarters (April through September) of 2009.
- KYG044922: Outfalls 1,2,13,14,15,3,4,5,6,12,16,17,18,19,20,25,26,27,28,29: 3rd Quarter (July through September) of 2008 and 2009.
- KYG046237: Outfalls BB-07: 3rd Quarter (July through September) of 2008.
- KYG046409: Outfalls 2, D.O.-27, D.O.-28, D.O.-29, D.O.-30, D.O.-31, D.O.-33, D.O.-34: 1st Quarter (January through March) of 2009.
- KY0053546: Outfalls 6,7,8,9,3: All 12 months (January through December) of 2008; and 1st Quarter (January through March) of 2009.
- KYG045718: Outfall D.O.-1: 1st Quarter (January through March) 2009.
- KYG042269: Outfalls – unknown: All 2008, 2009, and 1st & 2nd quarters (January through June) of 2010.
- KYG045764: Outfalls 1,1B,7B,8B: 1st Quarter (January through March) 2009.
- KYG040112: Outfalls 1, BB-1, BB-2, BB-4: 3rd Quarter (July through September) 2009.
- KYG045996: 1st, 2nd, 3rd, 4th quarters (January through December) of 2008, 2009; 1st & 2nd Quarters (January through June) of 2010.
- KY0108111 (old KYG046249): Outfall 2: 1st, 2nd, 3rd, 4th quarters (January through December) 2008.

The remedial measure(s), and date(s) to be completed by are as follows:

Frasure Creek Mining, LLC shall comply with the terms and conditions of their KPDES Permits. [KRS 224.70-110]

6 Violation Description for Subject Item AIOO0000082715():

No person shall, directly or indirectly, throw, drain, run or otherwise discharge into any of the

waters of the Commonwealth, or cause, permit or suffer to be thrown, drained, run or otherwise discharged into such waters any pollutant, or any substance that shall cause or contribute to the pollution of the waters of the Commonwealth in contravention of the standards adopted by the cabinet or in contravention of any of the rules, regulations, permits, or orders of the cabinet or in contravention of any of the provisions of this chapter. [KRS 224.70-110]

Description of Non Compliance:

Frasure Creek Mining, LLC violated 401 KAR 5:065, Section 2(1), which cites to 40 CFR 122.41(1)(4)(i), by failing to accurately reported monitoring results on Discharge Monitoring Reports (DMRs). A comparison of laboratory analysis bench sheets (LABSs) and the DMRs found discrepancies between data reported on the LABSs and the data entered on the DMRs for certain time periods reviewed. Data reported involved either identical data, or conflicting data, caused by conflicting information regarding outfall-sharing permits, sampling reporting errors, or clerical transcription errors in completing the template of the DMRs. KDEP discovered these violations in the following permits listed below.

KYG040569 (860-0469/0424):

Outfall 4: 2nd & 3rd Qtrs 2008

Identical data, hand-corrected date changes - dates. (Clerical transcription error)

KYG040569 (860-0469/0424):

Outfall 11: 3rd & 4th Qtrs 2008

Identical data, hand-corrected date changes - dates. (Clerical transcription error)

KYG040569 (860-0469/0424):

Outfall 10: 4th Qtr 2008

Identical data. (Shared outfall)

KY0078271 (836-8061) and KYG044819 (836-8062):

Outfall 2: 2nd, 3rd, 4th Qtrs 2008; 2nd & 4th Qtrs 2009

Identical data. (Sampling reporting errors)

KYG042947 (860-0466), KYG040567 (860-0468), KYG041006 (860-0470), KY0101761 (860-9014):

Outfall 10: 4th Qtr 2008

Conflicting data. (Sampling reporting errors regarding shared outfall)

KYG045749 (898-0810) & KYG046049 (898-0811):

Outfall 59: 4th Qtr 2008; 1st, 2nd, 4th Qtrs 2009

Conflicting data. (Shared outfall / sampling reporting errors)

KYG044971 (897-0499):

Outfall 119: 1st Qtr 2008

Sampling reporting errors

KYG040567 (860-0468):

Outfall 10: 1st Qtr 2008

Sampling reporting errors

KYG046282 (877-0182):

Outfalls 1,14,16: 3rd Qtr 2009

Conflicting Sampling dates. Correct data.

The remedial measures, and date(s) to be completed by are as follows:

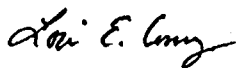
Frasure Creek Mining, LLC shall comply with the terms and conditions of their KPDES Permits. [KRS 224.70-110]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their

deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

If you have questions or need further information, write or call the undersigned:

Department for Environmental Protection
Division of Enforcement
300 Fair Oaks Lane
Frankfort, KY 40601
502-564-2150 extension 266 (8:00 AM – 4:30 PM)
Ms. Lori Conway, Enforcement Specialist



Issued By: _____

Ms. Lori E. Conway
Environmental Enforcement Specialist
Compliance and Operations Branch
Date: November 29, 2010



Issued By: _____

Mark J. Cleland, M.P.A., R.E.H.S.
Environmental Control Manager
Compliance and Operations Branch
Date: November 29, 2010

How Delivered: Hand Delivered

FRASURE CREEK

ATTACHMENT A

	DNR Permit	Old or New DNR#	KPDES Permit	AI #
1	860-0469	860-0424	KYG040569	12527
2	836-8061		KY0078271	1151
3	836-8062		KYG044819	14714
4	860-0466		KYG042947	12527
5	860-0468		KYG040567	12527
6	860-0470		KYG041006	12527
7	860-9014		KY0101761	2531
8	898-0810		KYG045749	15554
9	898-0811		KYG046049	70589
10	897-0499		KYG044971	106061
11	897-0503		KYG045676	80027
12	877-0182		KYG046282	99512
13	836-0341		KYG046237	96779
14	836-0345		KYG045764	105993
15	836-0346	836-0301	KYG045996	105994
16	836-5526	836-5441	KYG040512	12507
17	836-5524	836-5423	KYG045752	15557
18	836-5525	836-5437	KYG045718	15525
19	836-5531		KYG041754	12959
20	836-0347	836-0303	KYG045938	84110
21	836-0326		KY0108111	97171
22	836-0343		KYG046409	105558
23	897-8049	897-8047	KYG041311	82726
24	813-0328	813-0300	KYG045943	81733
25	897-8048	897-8044	KY0046981	3430
26	897-0492		KYG040609	12542
27	897-0495		KYG043231	13664
28	897-0496	897-0471	KYG044054	13426
29	897-0497	897-0472	KYG044510	82764
30	877-0177	877-0165	KYG044922	100715
31	877-0200	877-0173	KYG046314	80884
32	836-8066	836-8059	KY0053546	1128
33	860-0467		KYG040112	12337
34	813-0321		KYG040075	12322
35	836-0342		KYG046408	105557
36	897-0493		KYG040644	12555
37	897-0494		KYG042269	82737