

# PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

PACE UNIVERSITY SCHOOL OF LAW

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## ADMINISTRATORS

MARY BETH POSTMAN

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October 7, 2010

## **VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED**

FRASURE CREEK MINING, LLC  
4978 Teays Valley Road  
Scott Depot, WV 25560

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

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

Dear Sir or Madam:

Appalachian Voices, Inc., Waterkeeper Alliance, Inc., Kentuckians for the Commonwealth, Inc. (“KFTC”), Kentucky Riverkeeper, Inc., Ms. Pat Banks, Ms. Lanny Evans, Mr. Thomas H. Bonny, and Mr. Winston Merrill Combs (collectively, “Appalachian Voices”) hereby place Frasure Creek Mining, LLC (“Frasure Creek”) on notice of their intent to sue Frasure Creek pursuant to § 505(b) of the Clean Water Act (“CWA”), 33 U.S.C. § 1365(b), for violations of “an effluent standard or limitation” pursuant to CWA § 505(a)(1)(A) and (f), 33 U.S.C. § 1365(a)(1)(A) and (f).

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

Frasure Creek has violated, and continues to violate, “an effluent standard or limitation” under CWA §§ 505(a)(1)(A) and (f), 33 U.S.C. §§ 1365(a)(1)(A) and (f), in reference to Kentucky Pollutant Discharge Elimination System (“KPDES”) Coal General Permit No.

KYG040000 (the “General Permit”),\* issued by the Kentucky Department of Environmental Protection, Division of Water (“KDOW”) pursuant to § 402(b) of the CWA, 33 U.S.C. § 1342(b). Violation of “an effluent standard or limitation,” for purposes of a KPDES permit, is defined pursuant to CWA § 505(f), 33 U.S.C. § 1365(f), 401 K.A.R. 5:065 and 40 C.F.R. §§ 122 and 123.25.

These ongoing and continuing violations fall into one or more of the following categories:

**I. Submission of False/Fraudulent DMR Data**

DMRs on file with KDNR repeatedly show duplicate DMR submissions that contain exactly the same effluent data for all effluent characteristics reported on other DMRs for the same DSMRE number during different yearly quarters, or for different outfalls during the same yearly quarter. In other words, Frasure Creek merely re-filed previously submitted DMRs under a different signature and date or outfall. This pattern and practice of falsifying DMR data from one DMR to another continues over a period of at least nine months in 2008.

In addition to submitting identical effluent data for different monitoring periods or outfalls, Frasure Creek conversely submitted different effluent data for the same outfalls in the same monitoring periods. In many instances, Frasure Creek maintained multiple DSMRE numbers for a single outfall. Accordingly, Frasure Creek submitted multiple DMRs for the same outfalls for each monitoring period. In other instances, Frasure Creek submitted multiple DMRs for the same DSMRE number, outfall, and monitoring period. Although effluent monitoring data on these DMRs should be identical, there are numerous discrepancies between data on multiple DMRs submitted by Frasure Creek for the same outfall in the same monitoring period. This pattern of submitting conflicting monitoring data for the same outfalls continues over a period of at least twenty one (21) months in 2008 and 2009.

**For a DMR-specific identification of Frasure Creeks’s submissions of fraudulent, or otherwise false DMR data, please see the items listed under heading “I.” in the attached appendix.**

The repeated submission of duplicate or conflicting DMRs that are fraudulent, or otherwise false, on their face raises suspicion regarding the validity of data submitted in all of Frasure Creek’s DMRs on file with the KDNR for the past five years. Therefore, Appalachian Voices has a good faith belief that Frasure Creek has failed, and continues to fail, in its obligation to submit and maintain accurate DMRs in accordance with federal and state regulations and the terms and conditions of KPDES Permit No. KYG040000.

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\* The current version of KPDES Coal General Permit No. KYG040000 became effective on August 1, 2009, replacing a previous version of Permit No. KYG040000 that had been in effect since January 1, 2004. Unless otherwise noted, all references to the Coal General Permit in this Notice refer to the version that became effective on January 1, 2004.

The submission by Frasure Creek of fraudulent, or otherwise false, DMR data leads to the inevitable conclusion that Frasure Creek has violated KPDES Permit No. KYGO4000 in a number of ways, as set forth below.

**a. Continuing Violations**

**i. Submission of Fraudulent DMRs Equates to an Ongoing Violation of No Submission**

KPDES Permit No. KYG040000 states, “Discharge monitoring results obtained during the previous month shall be summarized for each outfall and reported using only KDOW approved Discharge Monitoring Report (DMR) forms and formats.” Part I, Page I-15, D. Also, the permit details that “Test procedures for the analysis of pollutants shall conform to all regulations published pursuant to KRS 224,” which includes 401 KAR 5:065 and incorporates 40 C.F.R. §§ 122.48 and 123.25. Part I, Page I-18, F.

Therefore, Frasure Creek’s filing of facially fraudulent, or otherwise false, DMRs equates to the failure to submit and maintain accurate DMRs with the KDNR. CWA §§ 308(A)(i)-(ii), (v), 33 U.S.C. §§ 1318(A)(i)-(ii), (v). *Sierra Club v. Simkins Industries, Inc.*, 847 F.2d 1109, 1111-1112 (4th Cir. 1988); *Menzel v. County Utilities Corporation*, 712 F.2d 91, 94 (4th Cir. 1983) (“a discharger that fails to file discharge-monitoring reports, or fails to file accurate reports, would be in violation of the provisions of its NPDES permit and would be subject to citizens' suits under 33 U.S.C. § 1365”). Failure to submit a DMR constitutes ongoing violations for each day for every outfall and every effluent parameter listed in the applicable CWA permit, which accrue civil penalties per day and per limit until the violations cease. *Sierra Club v. Simkins Industries, Inc.*, 847 F.2d 1109, 1112 (4th Cir. 1988).

**ii. Submission of Fraudulent DMRs Constitutes Ongoing Violations of a Permit Condition**

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

As it is the responsibility of every owner and operator to ensure compliance with CWA permits and permit conditions, and as failure to submit accurate DMRs is a violation of a condition of KPDES Permit No. KYG040000, Frasure Creek is in a state of continuing violation of its permit. This constitutes ongoing violations for each day for every outfall and every effluent parameter listed in the applicable CWA permit, which accrues penalties per day and per limit until the violations cease.

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

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

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

**c. Failure to Accurately Sample and Test Effluent**

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

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

**II. Self-Reported Exceedances/Violations of Effluent Limitations**

DMRs on file with KDNR show repeated failures by Frasure Creek to comply with effluent limitations for specific parameters set forth in KPDES Permit No. KYG040000. AI No. 35050, Fact Sheet Page 4-25. Such failures constitute violations of CWA § 301(a), 33 U.S.C. § 1311(a).

**For a DMR-specific identification of Frasure Creeks's self-reported violations of daily maximum and monthly average effluent limitations, please see items listed under heading "II." in the attached appendix.**

"Violations of 'average' limitations encompassing periods greater than one day are to be treated as a violation for each day of the time period involved." *Chesapeake Bay Found., Inc. v. Gwaltney of Smithfield, Ltd.*, 791 F.2d 304, 317 (4<sup>th</sup> Cir. 1986). As such, Frasure Creek violated its permit thirty-one (31) times in May, 2009 by exceeding the monthly average effluent limitation for TSS, and an additional thirty-one (31) times in March, 2009 by exceeding the monthly average effluent limitation for total recoverable manganese.

### **III. DMR Signature Violations**

As mentioned above, a violation of a permit or permit condition issued under CWA § 402, 33 U.S.C. § 142, is a violation of an "effluent limitation or standard" in accordance with CWA § 505(f), 33 U.S.C. § 1365(f). KPDES Permit No. KYG040000 states, "Discharge monitoring results obtained during the previous month shall be summarized for each outfall and reported using only KDOW approved Discharge Monitoring Report (DMR) forms and formats." Part I, Page I-15, D. Also, the permit requires compliance with 401 KAR 5:065 and 40 C.F.R. § 123.25. Part I, Page I-18, F. This incorporates 40 C.F.R. § 122.22(b), which requires that "All reports required by permits . . . shall be signed by a person" as detailed more fully in the 40 C.F.R. § 122.22(a) to include a person that is either (1) "in charge of a principal business function" or (2) "the manager . . . authorized to make management decisions which govern the operation of the regulated facility." Moreover, the regulations require that such signature or "authorization is made in writing by a person" so described in the regulations. 40 C.F.R. § 122.22(b)(1). *See also* 40 C.F.R. § 122.22(b)(2)(c) (requiring "written authorization" or signature on submitted DMRs).

Frasure Creek has violated these provisions as at least twenty nine (29) DMRs submitted to and on file with KDNR show signatures that do not match the name listed on the form as the authorized signatory. Additionally, some DMRs have inaccurate dates next to signatures (that do not match the quarter for which the report is filed). This calls into question the validity of the DMRs, especially when the signature does not match the name of the person listed, or the signature is dated prior to the end of the monitoring period.

**For a DMR-specific identification of Frasure Creeks's DMR signature violations, please see items listed under heading "III." in the attached appendix.**

Each of Frasure Creek's failures to comply with the regulations regarding signatories to permit reports is a violation of KPDES Permit No. KYG040000, and these failures constitute ongoing violations for each day for every outfall and every effluent parameter listed in the applicable CWA permit, which accrues penalties per day and per limit until the violations are remedied.

#### **IV. Additional Violations**

In addition to the permit violations detailed above, Frasure Creek repeatedly failed to maintain accurate records of its discharges by submitting DMRs with missing information or inaccurate dates.

**For a DMR-specific identification of Frasure Creeks's additional DMR violations, please see items listed under heading "IV." in the attached appendix.**

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Based on Frasure Creek's apparent pattern and practice of repeatedly falsifying data and DMR reports, Appalachian Voices reserves the right to add to the specific CWA violations set forth additional claims based on the same pattern of violations set forth herein upon determining that such claims exist. Appalachian Voices takes these violations very seriously and intends to enforce any and all violations of the CWA that have occurred within the statute of limitations.

Appalachian Voices believes that this letter provides sufficient information to place Frasure Creek on notice of our intent to sue and the grounds for a complaint. At the close of the 60-day notice period, unless significant progress is made in remedying and preventing these violations, Appalachian Voices intends to file suit in federal court under CWA §§ 505(b) and 301(a), 33 U.S.C. §§ 1365(b), 1311(a). As noted in CWA § 309(d), 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and K.R.S. 224.99-010, violators of the CWA are subject to civil monetary penalties in amounts of up to \$37,500 per violation, per day. Such civil monetary penalties, if assessed by a court, are payable to the federal treasury.

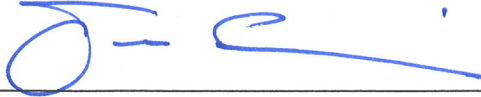
This letter is sent on behalf of: Appalachian Voices, Inc. (contact person: Ms. Willa Mays, Executive Director, 191 Howard Street, Boone, North Carolina 28607, Phone: (828) 262-1500); Waterkeeper Alliance, Inc. (contact person: Mr. Scott Edwards, Director of Advocacy, 50 South Buckhout Street, Suite 302, Irvington, New York 10533, Phone: (914) 674-0622, Ext. 13); Kentuckians for the Commonwealth, Inc. (contact person: Mr. Burt Lauderdale, Executive Director, P.O. Box 1450, London, Kentucky 40743, Phone: 606-878-2161); Kentucky Riverkeeper, Inc. (contact person: Ms. Pat Banks, 300 Summit Street, Richmond, Kentucky 40475, Phone: (859) 622-3065); Ms. Pat Banks, in her capacity as Kentucky Riverkeeper, 300 Summit Street, Richmond, Kentucky 40475, Phone: (859) 527-3334; Ms. Lanny Evans, 4625 Four Mile Road, Winchester, Kentucky 40391, Phone: (859) 527-0134; Mr. Thomas H. Bonny, 1548 Wisemantown Road, Irvine, Kentucky 40336, Phone (606) 723-5694; and Mr. Winston Merrill Combs, 7225 Old Boonesboro Road, Winchester, Kentucky 40391, Phone: (859) 595-9637.

Appalachian Voices, Inc., Waterkeeper Alliance, Inc., Kentucky Riverkeeper, Inc., Ms. Pat Banks, Ms. Lanny Evans, Mr. Thomas H. Bonny, and Mr. Winston Merrill Combs are

represented in this matter by Karl S. Coplan and Daniel E. Estrin, Esqs., Pace Environmental Litigation Clinic, Inc., 78 North Broadway, White Plains, New York 10603. Appalachian Voices, Inc. is also represented by Paul A. Capua, Esq., Capua Law Firm, PA, The Greenhouse, 164 Depot Street, Boone, North Carolina 28607, Phone: (828) 264-0260; and Lauren H. Waterworth, Waterworth Law Offices, PLLC, 815 West King Street, Suite 2, P.O. Box 254, Boone, North Carolina, 28607, Phone: (828) 355-9750. KFTC is represented in this matter by Mary Cromer, Esq., Appalachian Citizens' Law Center, Inc., 317 Main Street, Whitesburg, Kentucky 48158, Phone: (606) 633-3929.

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

Very truly yours,



Karl S. Coplan, Esq.  
Daniel E. Estrin, Esq.  
Peter Harrison & Robert Rieske, Legal Interns  
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**Attachment—Appendix identifying CWA violations alleged herein**

FRASURE CREEK MINING, LLC  
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CC (via certified mail—return receipt requested):

Eric Holder, Jr., Attorney General  
United States Department of Justice  
10<sup>th</sup> Street and Constitution Ave., N.W.  
Washington, DC 20530

Lisa Jackson, Administrator  
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Mail Code: 1101A  
Washington, DC 20460

Gwen Keyes Fleming, Regional Administrator  
U.S. Environmental Protection Agency, Region 4  
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Sandy Gruzesky, Director  
Kentucky Department of Environmental Protection, Division of Water  
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Peter T. Goodman, Assistant Director  
Kentucky Department of Environmental Protection, Division of Water  
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Carl Campbell, Commissioner  
Kentucky Department for Natural Resources  
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Frankfort, KY 40601

Dr. Len Peters, Office of the Secretary  
Kentucky Energy and Environment, Cabinet  
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Frankfort, KY 40601



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

**Appendix: Alleged Clean Water Act Violations by Frasure Creek Mining, Inc.****I. Submission of False/Fraudulent DMR Data**

DSMRE #	KPDES #	Outfall #	Monitoring Period	Nature of Violations	Description
860-0424 <sup>1</sup>	KYG040567	4	2 <sup>nd</sup> Quarter 2008 3 <sup>rd</sup> Quarter 2008	42 identically repeated values for 90 days.	All 42 effluent measurements from 2 <sup>nd</sup> Quarter 2008 DMR are repeated identically on 3 <sup>rd</sup> Quarter 2008 DMR. Signatures on both DMRs are dated 7/15/2008 (prior to the end of the 3 <sup>rd</sup> Quarter 2008 monitoring period).
860-0424 <sup>1</sup>	KYG040567	11	3 <sup>rd</sup> Quarter 2008 4 <sup>th</sup> Quarter 2008	42 identically repeated values for 90 days.	All 42 effluent measurements from 3 <sup>rd</sup> Quarter 2008 DMR are repeated identically on 4 <sup>th</sup> Quarter 2008 DMR. Signatures on both DMRs are dated 10/15/2008 (prior to the end of the 4 <sup>th</sup> Quarter 2008 monitoring period).
860-0424 <sup>1</sup>	KYG040567	10	4 <sup>th</sup> Quarter 2008	42 identically repeated values for 90 days.	All 42 effluent measurements are identical to 4 <sup>th</sup> Quarter 2008 data for a different outfall (Outfall #10, DSMRE #s 860-0466 and 860-9014)
836-8061 836-8062	KYG04 <sup>2</sup>	2	2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> Quarters 2008; 2 <sup>nd</sup> , 4 <sup>th</sup> Quarters 2009	42 identically repeated values for 90 days.	Identical effluent data submitted for 2 <sup>nd</sup> Quarter 2009 only. If both DSMRE #s refer to the same outfall, then data for other monitoring periods should also be identical.
860-0466 860-0468 860-0470 860-9014	KYG042947 KYG040567 KYG041006 KYG045277	10	4 <sup>th</sup> Quarter 2008	Conflicting data for same outfall.	860-0466 and 860-9014 have different data than 860-0468 and 860-0470. All four DSMRE #s relate to the same outfall, and should have identical effluent data on each corresponding DMR.
898-0810 898-0811	KYG04 <sup>2</sup>	59	4 <sup>th</sup> Quarter 2008; 1 <sup>st</sup> , 2 <sup>nd</sup> , 4 <sup>th</sup> Quarters 2009	Conflicting data for same outfall.	Different effluent data on each DMR. Both DSMRE #s relate to the same outfall, and should have identical effluent data on each corresponding DMR.
897-0499	KYG044971	119	1 <sup>st</sup> Quarter 2008	Conflicting data for same outfall.	Two different DMRs with different effluent data submitted for the same outfall, same DSMRE #, and same monitoring period. Sampling dates are identical on both DMRs.
860-0468	KYG040567	10	1 <sup>st</sup> Quarter 2008	Conflicting data for same outfall.	Two different DMRs with different effluent data submitted for the same outfall, same DSMRE #, and same

<sup>1</sup> Name given on DSMRE is "Big Elk Mining, LLC," however it is believed that Fraser Creek Mining, LLC owned and operated this mine at the time of the violation.

<sup>2</sup> Complete KPDES # not recorded on DMR.

					monitoring period. Sampling dates are identical on both DMRs.
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## II. Self-Reported Exceedances/Violations of Effluent Limitations

DSMRE #	KPDES #	Outfall #	Monitoring Period	Effluent Characteristic	Permit Limits	Reported Discharge
897-0503	KYG045657	SS5	2 <sup>nd</sup> Quarter 2009	TSS	35.0 mg/l (monthly av.)	61.0 mg/l (monthly av. for 5/2009) <sup>3</sup>
					70.0 mg/l (daily max.)	112 mg/l (5/28/2009)
860-0469	KYG040567	4	1 <sup>st</sup> Quarter 2009	Total Recoverable Manganese	2.0 mg/l (monthly av.)	83.9 mg/l (monthly av. for 3/2009) <sup>3</sup>
					4.0 mg/l (daily max.)	166 mg/l (3/14/2009)

## III. DMR Signature Violations

DSMRE #	KPDES #	Outfall #	Monitoring Period(s)	Description
860-0424 <sup>4</sup>	KYG040567	4	2 <sup>nd</sup> Quarter 2008 3 <sup>rd</sup> Quarter 2008	Jody Salisbury signed for Jeffrey A. Hoops. Signature on 3 <sup>rd</sup> Quarter 2008 DMR is dated 7/15/2008, prior to the end of the 3 <sup>rd</sup> Quarter 2008 monitoring period.
860-0424 <sup>4</sup>	KYG040567	11	3 <sup>rd</sup> Quarter 2008 4 <sup>th</sup> Quarter 2008	Jody Salisbury signed for Jeffrey A. Hoops. Signature on 4 <sup>th</sup> Quarter 2008 DMR is dated 10/15/2008, prior to the end of the 4 <sup>th</sup> Quarter 2008 monitoring period.
860-0424 <sup>4</sup>	KYG040567	10	4 <sup>th</sup> Quarter 2008	Jody Salisbury signed for Jeffrey A. Hoops.
836-8061	KYG04 <sup>5</sup>	2	2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> Quarters 2008; 2 <sup>nd</sup> , 4 <sup>th</sup> Quarters 2009	Jody Salisbury signed for Jeffrey A. Hoops.
836-8062	KYG04 <sup>5</sup>	2	2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> Quarters 2008; 2 <sup>nd</sup> , 4 <sup>th</sup> Quarters 2009	Jody Salisbury signed for Jeffrey A. Hoops.
860-0466	KYG042947	10	4 <sup>th</sup> Quarter 2008	Jody Salisbury signed for Jeffrey A. Hoops.
860-0468	KYG040567	10	4 <sup>th</sup> Quarter 2008	Jody Salisbury signed for Jeffrey A. Hoops.
860-0470	KYG041006	10	4 <sup>th</sup> Quarter 2008	Jody Salisbury signed for Jeffrey A. Hoops.
860-9014	KYG045277	10	4 <sup>th</sup> Quarter 2008	Jody Salisbury signed for Jeffrey A. Hoops.
898-0810	KYG04 <sup>5</sup>	59	4 <sup>th</sup> Quarter 2008; 1 <sup>st</sup> , 2 <sup>nd</sup> , 4 <sup>th</sup> Quarters 2009	Jody Salisbury signed for Jeffrey A. Hoops.

<sup>3</sup> Monthly averages determined by calculating arithmetic mean of all sample values recorded for each calendar month, as specified in KPDES Permit No. KYG04000, Part I, Page I-14, § E(22).

<sup>4</sup> Name given on DSMRE is "Big Elk Mining, LLC," however it is believed that Frasure Creek Mining, LLC owned this mine at the time of the violation.

<sup>5</sup> Complete KPDES # not recorded on DMR.

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898-0811	KYG04 <sup>5</sup>	59	4 <sup>th</sup> Quarter 2008; 1 <sup>st</sup> , 2 <sup>nd</sup> , 4 <sup>th</sup> Quarters 2009	Jody Salisbury signed for Jeffrey A. Hoops.
897-0499	KYG044971	119	1 <sup>st</sup> Quarter 2008	Jody Salisbury signed for Jeffrey A. Hoops.
860-0468	KYG040567	10	1 <sup>st</sup> Quarter 2008	Jody Salisbury signed for Jeffrey A. Hoops.

**IV. Additional Violations**

<b>DSMRE #</b>	<b>KPDES #</b>	<b>Outfall #</b>	<b>Monitoring Period</b>	<b>Nature of Violation(s)</b>	<b>Description</b>
877-0182	KYG04	1	3 <sup>rd</sup> Quarter 2009	42 inaccurate or deficient discharge monitoring data entries for 90-day period; Incomplete KPDES #.	Monitoring period listed as "3 <sup>rd</sup> Quarter 2009," but "Date" column contains first quarter dates. Missing facility-specific KPDES #.
877-0182	KYG04	14	3 <sup>rd</sup> Quarter 2009	42 inaccurate or deficient discharge monitoring data entries for 90-day period; Incomplete KPDES #	Monitoring period listed as "3 <sup>rd</sup> Quarter 2009," but "Date" column contains first quarter dates. Missing facility-specific KPDES #.
877-0182	KYG04	16	3 <sup>rd</sup> Quarter 2009	42 inaccurate or deficient discharge monitoring data entries for 90-day period; Incomplete KPDES #.	Monitoring period listed as "3 <sup>rd</sup> Quarter 2009," but "Date" column contains first quarter dates. Missing facility-specific KPDES #.