

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 10-CI-01868 and 01869

ENERGY AND ENVIRONMENT CABINET
and
APPALACHIAN VOICES, et al.

PLAINTIFF

PLAINTIFF INTERVENORS

VS.

**NOTICE OF FILING OF AFFIDAVIT OF
DEPARTMENT OF ENVIRONMENTAL PROTECTION
COMMISSIONER, R. BRUCE SCOTT**

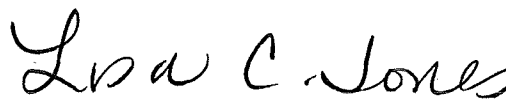
FRASURE CREEK MINING, LLC and
ICG HAZARD, LLC, et al.

DEFENDANTS

Comes Plaintiff, Energy and Environment Cabinet, and notifies the Court and all parties that, in compliance with the Order entered on July 5, 2012, that attached Notice of Filing of Affidavit of Department of Environmental Protection Commissioner, R. Bruce Scott is submitted and filed this date.

Respectfully submitted,

ENERGY AND ENVIRONMENT CABINET



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing NOTICE OF FILING OF AFFIDAVIT OF DEPARTMENT OF ENVIRONMENTAL PROTECTION COMMISSIONER, R. BRUCE SCOTT was on this 13th day of July, 2012 served by first-class mail, postage pre-paid and by electronic mail, to the following:

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AFFIDAVIT OF R. BRUCE SCOTT

1. I, R. Bruce Scott, received a chemical engineering degree from the University of Kentucky in December 1982 and have been a registered professional engineer in Kentucky since 1991. I have been employed by the Commonwealth of Kentucky Energy and Environmental Cabinet ("the Cabinet") for nearly 29 years, or from August 6, 1983 to the present. From 1983 to 2004, I worked in the Cabinet's Division of Water Kentucky Pollution Discharge Elimination System (KPDES) Permitting Branch, serving as Branch Manager from 1994 to 2004. In those roles, I have worked on or overseen the work on thousands of Clean Water Act (CWA) Section 402 National Pollutant Discharge Elimination System (NPDES) permits, including thousands for coal mining operations. On January 16, 2008 I was appointed Commissioner of the Cabinet's Department for Environmental Protection and currently serve in that position. I have personal knowledge of the matters discussed herein.

2. With respect to the review of Discharge Monitoring Reports (DMRs) as submitted by coal mining operations with KPDES permits, the Division of Enforcement (DENF) within the

Department for Environmental Protection (DEP) reviews DMRs for compliance with the terms and conditions of KPDES permits. The DMR reviews investigate several aspects of the KPDES self-monitoring program, including violations of effluent limits, monitoring and reporting in accordance with KPDES permits, and proper certification of DMRs. DENF currently has four employees dedicated to conducting detailed DMR compliance reviews for coal mining DMRs as of the start of FY2013 (July 1, 2012). This current complement of four employees is comprised of three full-time merit employees and one temporary employee. DMR compliance reviews may also be performed, coordinated, or overseen by inspectors, permitting staff, legal staff, management staff, or other staff within DEP or the Cabinet.

3. With respect to changes in personnel within DENF that perform compliance reviews of DMRs submitted by coal mining operations, one merit position enforcement specialist left the agency on January 20, 2012. That position was filled on May 1, 2012. One position was transferred from the Civil Enforcement Branch to the Compliance and Operations Branch to conduct coal mining DMR reviews. This position was filled on August 16, 2011. In addition, Jeff Cummins was officially appointed as the Director of the Division of Enforcement effective June 16, 2012.

4. Twenty-nine Performance Audit Inspections (PAIs) have been performed on twenty-five wastewater laboratories by the Division of Water since the ICG and Frasure Creek enforcement actions were initiated. PAI's on two labs are to be conducted by August 2012. At that time, PAI's for all known wastewater labs that perform wastewater analysis for coal mining operations will have been completed by the agency. The agency initially established October 2012 to complete these PAIs.

5. Since the ICG and Frasure Creek enforcement actions were initiated, approximately 84,000 DMRs have had compliance reviews conducted that relate to 447 SMCRA permits for twenty (20) coal mining companies.

6. DEP has enhanced its internal procedures and training to ensure consistent and accurate review of DMRs. In addition, the agency has and continues to develop information to assist affected KPDES permit holders with guidance on the proper methods for completing and submitting DMRs.

7. The agency has been diligently working to enhance its field inspection oversight capabilities and responsibilities, with respect to the Clean Water Act (CWA) Section 402 inspection of coal mining operations. The agency has targeted the end of calendar year 2012 for enhanced CWA 402 inspection procedures to be formally implemented by the agency.

8. Since the first quarter of 2010, all coal companies with KPDES permits are required to electronically submit DMRs in an excel file format to the Department for Natural Resources (DNR) field offices via an FTP site which are then imported into the DNR document processing system. DENF staff access the DNR system and those electronic DMR files and conduct compliance reviews as previously discussed. While this current process is functioning, it is the long-term goal of the agency to enable entry of coal mining DMR data directly into an electronic DMR application so that compliance reviews can be performed in a more efficient manner, while also reducing data entry and reporting errors. Efforts continue in this regard.

9. DEP divided its current KPDES permitting section into two sections on March 1, 2012. In addition, selected existing staff within the Division of Water (DOW) were reassigned on March 1, 2012 to provide additional staffing to the KPDES permitting program in order to address long-term staffing shortages within that program. This division of duties and staffing

reassignments were done in order to address increasing CWA 402 workload concerns and complexities, in addition to providing focused attention to both coal mining and non-coal mining related CWA 402 permits across the Commonwealth. Concurrent with this action, in April 2012 the agency was provided \$250,000 in the Executive Branch budget for each year of the FY2013-14 biennium for purposes of providing "four additional positions associated with the Clean Water 402 Permitting Program."

10. DEP has experienced a substantial reduction in general fund appropriation since FY2008. The general fund budget for DENF in FY2008 was \$976,800 and in FY2013 is budgeted at \$672,900, a 31% reduction. In order to maintain essential DEP enforcement services within the agency, DEP made considerable efforts over the course of the last five (5) fiscal years to identify measures to minimize the budget reduction impacts to DEP core services. As a result, DEP has over the course of the last five fiscal years reallocated agency restricted funds and federal funds in order to maintain these core enforcement activities. Consequently, the total DENF budget in FY2008 was \$1,523,198 as compared to the FY2013 budget of \$1,524,400. As a result, DEP has been able to preserve the essential enforcement functions that DENF provides while incurring budget reductions in other programmatic areas of DEP. DEP does not yet know what potential cuts to federal funds may occur in the event that the USEPA budget is reduced as anticipated. Those reductions are currently proposed to be passed on to the states. The implications of federal grant reductions will likely cut across the entirety of DEP and will have to be adjusted for accordingly.

FURTHER THE AFFIANT SAYETH NAUGHT.

R. Bruce Scott

R. Bruce Scott

COMMONWEALTH OF KENTUCKY)

COUNTY OF Franklin)

Sworn to and subscribed before me, this 13 day of July, 2012.

My Commission Expires: 9/18/2015

[Signature]
Notary Public