

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
AT PIKEVILLE**

**APPALACHIAN VOICES, INC.,
WATERKEEPER ALLIANCE, INC.,
KENTUCKIANS FOR THE
COMMONWEALTH, INC., KENTUCKY
RIVERKEEPER, INC, and THE SIERRA
CLUB,**

Plaintiffs,

v.

**FRASURE CREEK MINING, LLC, and
TRINITY COAL CORPORATION,**

Defendants.

CIVIL ACTION

NO. _____

**COMPLAINT and
JURY DEMANDED**

For their Complaint, Plaintiffs Appalachian Voices, Inc., Waterkeeper Alliance, Inc. Kentuckians For The Commonwealth, Inc., Kentucky Riverkeeper, Inc., and The Sierra Club (collectively “Plaintiffs” or “Plaintiff groups”) respectfully allege as follows:

INTRODUCTION

1. This action is a “citizen suit” brought under section 505(a)(1) of the Federal Water Pollution Control Act (“Clean Water Act,” or “CWA”), 33 U.S.C. § 1365(a)(1), seeking relief from Frasure Creek Mining, LLC’s (“Frasure Creek”) and Trinity Coal Corporation’s (“Trinity,” collectively “Defendants”) chronic and frequent violations of the Clean Water Act and the terms and provisions of Frasure Creek’s Kentucky Pollutant Discharge Elimination System (“KPDES”) permits. These violations involve the repeated and systemic filing of inaccurate discharge monitoring reports (“DMRs”) containing

inaccurate data regarding the amount of pollutants discharged from Defendants' coal mining operations in eastern Kentucky, as well as self-reported exceedances of the amounts of pollutants Defendants are permitted to discharge from such mining operations.

2. The Clean Water Act and implementing regulations require that dischargers submit accurate DMRs reporting the amounts of specific pollutants they discharge into the nation's waters. The government and citizens depend on this information to know, among other things, whether dischargers are exceeding pollution limits and whether the affected waters are safe and protected.
3. Defendants have a history of submitting duplicate DMRs—in other words, DMRs with data copied from a prior DMR.
4. On October 7, 2010, Plaintiffs Appalachian Voices, Inc., Waterkeeper Alliance, Inc. Kentuckians For The Commonwealth, Inc., and Kentucky Riverkeeper, Inc. sent a notice of intent to sue Frasure Creek for, *inter alia*, the company's submission of duplicate DMRs. On December 3, 2010, the Kentucky Energy and Environment Cabinet ("Cabinet") filed a state court enforcement action against Frasure Creek for the violations alleged in the notice of intent to sue, including the filing of duplicate DMRs. Simultaneous with its filing, the Cabinet tendered a consent judgment. Plaintiffs Appalachian Voices, Inc., Waterkeeper Alliance, Inc. Kentuckians For The Commonwealth, Inc., and Kentucky Riverkeeper, Inc. were permitted to intervene for the purposes of assisting the Franklin Circuit Court in determining whether the proposed consent judgment was fair, adequate, reasonable, and in the public interest. On November 24, 2014, the Franklin Circuit Court ruled that the consent judgment was not

fair, adequate, reasonable, and in the public interest. The Franklin Circuit's determination is now on appeal.

5. At no point during the prior litigation did Frasure Creek deny the allegations that it had submitted duplicate DMRs.
6. In again submitting duplicate DMRs, Defendants display a cavalier disregard for the law that threatens both the health of Kentucky citizens and the environment and the integrity of the Clean Water Act's wastewater permitting programs.
7. Specifically, as alleged herein, on 141 occasions during the first quarter of 2014, Defendants submitted reports on its discharged pollutants that repeat exactly, or nearly exactly, the data submitted in a report for a prior month, indicating that Defendants simply copied existing information onto its forms and submitted them, rather than monitoring its discharges and reporting accurate data.
8. In addition, as alleged herein, during second quarter of 2014, Defendants self-reported 765 violations of daily maximum and monthly average effluent limitations contained in Frasure Creek's KPDES permits. These self-reported exceedances of permitted pollutant discharge amounts constitute admissions of liability under the CWA as a matter of law.
9. Plaintiffs seek civil penalties payable to the United States Treasury, declaratory and injunctive relief, and costs, including reasonable attorneys' fees.

JURISDICTION

10. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), 28 U.S.C. § 1331, and 28 U.S.C. § 1355.

11. The relief requested in this action is authorized pursuant to section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), 28 U.S.C. § 1331, and 28 U.S.C. § 1355.
12. This Court has jurisdiction over the declaratory and injunctive claims set forth in this complaint pursuant to 29 U.S.C. § 2201(a) and 28 U.S.C. § 2202 respectively.

VENUE

13. Venue is proper in the Eastern District of Kentucky pursuant to section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because Defendants' discharges occurred and continue to occur in this judicial district.
14. Venue is proper in the Southern Division, Pikeville Docket of the Eastern District of Kentucky, because the majority of Defendants' discharges (and therefore a substantial part of the events or omissions giving rise to the Complaint) occur in the Southern Division, in counties within the Pikeville Docket. LR 3.2(a)(3)(A), (d). Defendants have their principal office in Oak Hill, West Virginia 25901. Defendants do not reside in this district. LR 3.2(d).

NOTICE

15. On November 14, 2014, Plaintiffs Appalachian Voices, Inc., Waterkeeper Alliance, Inc., Kentuckians For The Commonwealth, Inc. and Kentucky Riverkeeper, Inc. gave notice of their intent to file suit for violations of the Clean Water Act ("NOI #1") to Defendants pursuant to section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A). Copies of said notice were also served upon the Commissioner of the Kentucky Department for Environmental Protection ("KDEP"); the Director and Assistant Director of KDEP, Division of Water ("KDOW"); the Commissioner of the Kentucky Department for

Natural Resources (“KDNR”); the Office of the Secretary of the Cabinet; the Attorney General of the United States; the Administrator of the United States Environmental Protection Agency (“EPA”); and the Regional Administrator of EPA, Region IV. *See* Exhibit 1.

16. On December 19, 2014, Plaintiff Sierra Club gave notice of its intent to file suit for violations of the Clean Water Act (“NOI #2”) to Defendants pursuant to section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A). Copies of said notice were also served upon the Commissioner of the KDEP; the Director and Assistant Director of KDOW; the Commissioner of the KDNR; the Office of the Secretary of the Cabinet; the Attorney General of the United States; the Administrator of the United States EPA; and the Regional Administrator of EPA, Region IV. *See* Exhibit 2.
17. More than sixty days have passed since plaintiffs served NOI #1 and NOI #2 upon Defendants.

ADMINISTRATIVE ACTION

18. On January 12, 2015, 59 days after Appalachian Voices, Inc., Waterkeeper Alliance, Inc., Kentuckians For The Commonwealth, Inc. and Kentucky Riverkeeper, Inc served NOI #1, the Cabinet filed an administrative complaint against Defendant Frasure Creek.
19. The Cabinet’s administrative complaint alleges all of the violations alleged in Counts 1 and 2 of this Complaint.
20. The Cabinet’s administrative action does not constitute a diligent prosecution “in a court of the United States, or a State” that would bar this Complaint under the CWA § 505(b)(1)(B), 33 U.S.C. § 1365(b)(1)(B).

21. The Cabinet's administrative action was commenced after the service of NOI #1, and fewer than 120 days have passed since Plaintiffs served NOI #1 and NOI #2. Therefore, the Cabinet's administrative action does not preclude this suit under CWA § 309(g)(6)(A)(ii). See § 309(g)(6)(B)(ii).
22. The Cabinet's administrative action against Defendant Frasure Creek does not constitute a diligent prosecution of an administrative action under state law comparable to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).
23. Based upon Defendants' longstanding pattern and practice of violating the CWA by submitting duplicate DMRs and discharging effluent in violation of its KPDES permit limits, the violations alleged herein are continuing or are reasonably expected to recur until enjoined by this Court.
24. This action satisfies all conditions precedent to filing suit under CWA § 505, 33 U.S.C. § 1365.

PARTIES

25. Defendant Frasure Creek Mining, LLC is a limited liability company incorporated under the laws of the State of West Virginia, doing business in the State of Kentucky, with its principal offices at P.O. Box 100, Oak Hill, West Virginia 25901 (Fayette County).
26. Defendant Frasure Creek Mining, LLC is a wholly owned subsidiary of Trinity Coal Corporation.
27. Defendant Trinity Coal Corporation is a company incorporated under the laws of the State of Delaware, doing business in the State of Kentucky, with its principal office at P.O. Box 100, Oak Hill, West Virginia 25901 (Fayette County).

28. Trinity Coal Corporation exerts pervasive control over and/or directs policies and operations of Frasure Creek Mining, LLC, including environmental compliance policies and operations such as wastewater monitoring and reporting. Trinity Coal Corporation has so dominated the policies and operations of Frasure Creek that it should not be recognized as a separate entity and doing so would sanction fraud or promote injustice. As such, all references in this Complaint to the activities of Frasure Creek Mining, LLC should be read to refer to the activities of both Defendants.
29. Defendants own and operate coal-mining facilities in Pike, Perry, Knott, Breathitt, Maggoffin, and Floyd Counties, Kentucky.
30. Defendants discharge effluent from their mining facilities in Kentucky into the Kentucky, Big Sandy, and Licking Rivers and/or their tributaries.
31. Defendants are “persons” for the purposes of section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5).
32. Plaintiff Appalachian Voices, Inc. (“Appalachian Voices”) sues on behalf of itself and its members. Appalachian Voices is a non-profit, member-based organization incorporated under the laws of the State of North Carolina with its principal place of business in Boone, North Carolina (Watauga County). Appalachian Voices is comprised of approximately 750 individual members and works to solve the environmental problems that have the greatest impact on the people who live in the central and southern Appalachian Mountains.
33. As part of its mission, Appalachian Voices focuses on reducing coal’s impact on the region, especially with regard to water pollution. The organization seeks to understand how pollution from coal facilities impacts the region’s waterways. It fulfills its mission

by educating its members, the region's citizens, and the broader public through its print and electronic news publications and by leading citizen monitoring workshops; by advocating for stricter pollution regulations; and by engaging in litigation. Appalachian Voices conducts each of these activities in eastern Kentucky in the areas affected by Frasure Creek's coal mining discharges. Each of these activities depends on accurate and reliable information water quality information, including information contained in coal mine discharge reports. Defendants' failure to provide accurate and reliable DMRs has harmed Appalachian Voices' ability to carry out its mission.

34. Appalachian Voices, in partnership with Kentuckians for the Commonwealth ("KFTC"), conducts workshops to educate community members on how to take basic water quality measurements. Both organizations expend resources on these workshops, which are geared toward community education and empowerment. Through these workshops, Appalachian Voices and KFTC teach eastern Kentuckians who live in areas likely affected by Defendants' pollution discharges how to conduct water quality sampling. The unreliability of data submitted by the Defendants and other coal companies in eastern Kentucky is one of the primary reasons that KFTC and Appalachian Voices train citizens to take their own water samples. If Frasure Creek and other coal companies submitted data that were reliable, the organizations would not need to expend their resources in conducting such extensive training in water quality testing and could focus their education and outreach efforts on other projects.
35. Based on its knowledge that Frasure Creek and other coal mining companies in eastern Kentucky have not been reporting accurate DMRs, Appalachian Voices has concerns about the accuracy and reliability of all coal-related DMRs. Because of its concerns,

Appalachian Voices developed a program to extract information from DMRs and compile that information into a broader database. The information is then analyzed and verified to look for repeated results and other anomalies. Appalachian Voices has expended hundreds of hours of staff time in creating the database and gathering, compiling, analyzing, and verifying the data.

36. In addition, because of its concerns regarding the unreliability of the water quality data from coal-related discharge monitoring reports, Appalachian Voices has expended resources to conduct water sampling in streams below coal mines to determine the true nature of coal mine discharges. This has included sampling below Defendants' discharge points. If Appalachian Voices were able to rely on the accuracy of the coal mine discharge reports, it would not have to conduct as much sampling, and would not conduct sampling in such hard to reach locations. Instead, the organization would focus its efforts farther downstream to monitor the health of the entire watersheds, which would require fewer samples and working in more easily accessible sites, which would require fewer expenditures.
37. As a result of Defendants' failures to file accurate DMRs, Appalachian Voices has expended resources it would not otherwise have expended. Those expenditures include additional monies spent on training community members in water testing, in scrutinizing DMRs, and in conducting its own water monitoring. If Appalachian Voices could rely on the accuracy of Defendants' DMRs, it would expend fewer resources on these specific activities.
38. In addition to those organizational interests, members of Appalachian Voices reside near or use and enjoy waters directly downstream from Defendants' discharges into the

Kentucky, Big Sandy Rivers, and Licking River and their tributaries in Pike, Floyd, Knott, and Magoffin Counties in Kentucky. These members use, or have used, these rivers and their tributaries for fishing, boating, recreation, drinking water and other uses. In particular, Appalachian Voices' member Bev May has lived most of her life on Wilson Creek in Floyd County downstream of Frasure Creek's discharges. Ms. May grew up along Wilson Creek, observing wildlife and playing along the creek. Ms. May has noticed a drop in the diversity and abundance of wildlife along Wilson Creek and is harmed by this awareness. She would like to be able to educate her great-niece about the diversity of species in the creek, but will not be able to do so because of the harm from pollution in the creek, some of which is being discharged by Frasure Creek. Ms. May is aware of Frasure Creek's pollution discharges into Wilson Creek and its false reporting of the amounts of pollution it is discharging. She is reasonably concerned that Frasure Creek may be discharging more pollution into Wilson Creek than it is reporting. She is aware through her own sampling that conductivity in the creek below Frasure Creek's discharges is very high. Ms. May is concerned about the levels of salts and metals that are being discharged by Frasure Creek. As a result of her concerns about the pollution in the creek, Ms. May has stopped using the creek to water her garden and will not allow her great-niece to play in the creek. Ms. May is also concerned about the health and safety of her water supply, which comes from the Levisa Fork at Allen, Kentucky downstream of several of Frasure Creek's mining operations. Ms. May has observed through her own conductivity testing that the conductivity of her tap water rises and falls in concert with increases and decreases in the conductivity of Wilson Creek and other waterways below Frasure Creek's mining operations which she tests regularly. She is

therefore reasonably concerned that Frasure Creek is causing harmful levels of pollution in her drinking water. She also reasonably believes that the pollution contributes to higher municipal water treatment costs, which results in higher water bills for her.

39. Plaintiff KFTC sues on behalf of itself and its members. KFTC is a non-profit member organization incorporated under the laws of the State of Kentucky with its principal place of business in London, Kentucky (Laurel County). KFTC is a citizens' social justice organization with 9000 members in 100 counties in the Commonwealth.
40. As an organization, protection of water quality in Kentucky through public education and advocacy work is one of KFTC's core social justice missions. To fulfill this mission, KFTC regularly disseminates information through its newsletter, blog posts, and meetings regarding water pollution issues in Kentucky. KFTC also advocates before state and federal officials for better water quality protections and engages in litigation where necessary to enforce Kentucky's water quality laws. The availability of accurate and reliable discharge monitoring data is central to KFTC's ability to fulfill its education and advocacy mission. Defendants' failure to provide accurate and reliable discharge monitoring information has harmed KFTC's ability to carry out its mission.
41. Many KFTC members live in Eastern Kentucky near Defendants' mining operations which are the subject of this action. These members rely on waters downstream of Defendants' discharges for household use, as well as for recreational, aesthetic, and other beneficial purposes. Bev May, whose interests and harm to those interests are described in paragraph 38 above, is also a KFTC member. Another KFTC member, Geneva Marshal, lives just one-half mile downstream of one of Frasure Creek's outfalls, which discharges into Open Fork Creek in David, Kentucky. Ms. Marshall grew up swimming

and playing in Open Fork Creek. She is harmed by Frasure Creek's pollution of Open Fork Creek. As a result of the pollution, there is thick orange sediment in parts of the creek and many of the living creatures that Ms. Marshal once observed and enjoyed are no longer found in the creek. In contrast to her childhood along the creek, Ms. Marshal will not allow her grandson to play in the obviously polluted areas of the creek. In addition, Ms. Marshal gets her household water from Prestonsburg's water supply, which is downstream of many of Defendants' discharges. Ms. Marshal is concerned about water pollution of the Prestonsburg municipal water supply and does not use the water for drinking or cooking. Another KFTC member, Cody Montgomery, regularly uses and has used water from the Salyersville municipal water supply, which is downstream of Defendants' discharges into tributaries of the Licking River. Mr. Montgomery is concerned about the level of pollution in the public water supply from surface mines upstream of the Salyersville water intake, including some of Defendants' mines. His concern is heightened because of the Defendants' false reporting. Because of the inaccurate DMRs filed by Defendant, he reasonably believes that he cannot determine the quality of his family's municipal water supply and reasonably believes that it may not be safe. As a result of the concerns about the safety of the drinking water, his family buys bottled water for drinking. Because he is concerned about pollution entering the Licking River and because he is aware that as a result of Defendants' false reporting, he cannot determine the extent of the pollution, he no longer fishes or swims in the Licking River.

42. Plaintiff Waterkeeper Alliance, Inc. ("WKA") sues on behalf of itself and its members. WKA is a non-profit membership organization incorporated under the laws of the State of New York, with its principal office in New York, New York (New York County).

WKA aspires to create and preserve swimmable, drinkable, fishable, and clean waterways in the United States and around the world. WKA is a membership organization, currently comprising more than 240 licensed member Waterkeeper organizations on six continents. Kentucky Riverkeeper, Inc. is a licensed member of WKA. WKA advances its interests and the interests of its member organizations in a variety of ways, including by reviewing publicly available information concerning pollution discharges in order to bring noncompliances or other water quality information to the attention of its member organizations, regulatory authorities, and the public. To do this, WKA relies on accurate, truthful monitoring and reporting. Defendants' submission of false discharge monitoring reports harms WKA's ability to fulfill its organizational mission of educating the public, its member organizations, and regulatory officials about water-related issues, responding to citizens' complaints, advocating compliance with environmental laws, and devising appropriate remedies to problems discovered.

43. Plaintiff Kentucky Riverkeeper, Inc. ("KRR") sues on behalf of itself and its members. KRR is a non-profit organization incorporated under the laws of the State of Kentucky, with its principal office located in Richmond, Kentucky (Madison County). KRR advocates for the stewardship of the Kentucky River watershed and its resources for the present and future generations, and is a member of Waterkeeper Alliance. Kentucky Riverkeeper works to educate its members about the Kentucky River and its tributaries and works to identify and draw attention to pollution issues in those waters. Because of Defendants' false reporting of pollution data, Kentucky Riverkeeper cannot provide accurate information to its members and to the public about the health and safety of the

Kentucky River and its tributaries. Defendants' false reporting harms KRK's ability to carry out this important part of its mission.

44. KRK members rely on waters downstream of Defendants' discharges for recreational, aesthetic, and other beneficial purposes. KRK member Pat Banks recreates in areas of the Kentucky River and its tributaries downstream of Defendants' pollution discharges. Ms. Banks is aware of Defendants' numerous self-reported pollution violations, as well as Defendants' failure to accurately and truthfully report pollution discharges on numerous occasions. As a result of this awareness, Ms. Banks reasonably suspects and fears that Defendants' actual pollution discharges may be worse even than what has been reported. Knowing that there are pollution violations, but being unable to know the extent of those violations causes harm to Ms. Banks in that she cannot determine whether it is safe to eat food grown in the flood plain of the Kentucky River and its tributaries or whether it is safe to fish or swim or otherwise recreate in and near the waterways in eastern Kentucky.
45. Plaintiff Sierra Club is a national non-profit, member-driven organization incorporated in the State of California as a Nonprofit Benefit Corporation, with its principal office located in San Francisco, California (San Francisco County). Sierra Club has approximately 640,000 members across the country, including over 5,000 members in its Cumberland Chapter. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club and its Cumberland (Kentucky) Chapter engage in

public education, advocacy, and litigation on environmental issues including clean air, clean water, and conservation of natural resources. Water quality issues – and in particular issues relating to water pollution from coal mines – are important to the Sierra Club’s mission. Its research, public education, and advocacy depend to a large degree on access to timely and accurate information required to be made available to the public, as well as on the successful function of regulatory measures put in place to limit and reduce existing pollution, and prevent future pollution from occurring. The Cumberland Chapter prepares newsletters and reports to explain water quality concerns to its members and to the public, and engages in litigation to enforce water quality protections. Sierra Club’s ability to disseminate information to its members and the public, and its ability to bring litigation to protect water resources in Kentucky from harmful pollution, depend on the organization’s access to timely, accurate, and reliable information in DMRs. Members of the Cumberland Chapter live, work, exercise, raise children, farm, garden, fish, bird watch, hike, camp, and recreate throughout Kentucky, including in Floyd, Knott, Magoffin, Perry, and Pike Counties. Bev May, whose interests and harm to those interests are described in paragraph 38 above is also a Sierra Club member.

46. Neither the claims asserted, nor the relief requested herein, require individual members of Plaintiffs to be included as parties to this Action.
47. Defendants’ failure to accurately report discharges, and its self-reported discharges of pollutants in excess of permitted amounts, are germane and detrimental to the organizational purposes of the Plaintiff groups. These organizations are injured by Defendants’ illegal actions.

48. Plaintiffs have additional organizational interests that are negatively affected by the Defendants' failure to fulfill monitoring and reporting obligations. Plaintiffs rely on accurate and complete discharge monitoring reports to fulfill their organizational purposes, including to ensure that Kentucky waters are safe and protected from pollution and other harms. Defendants' monitoring and reporting violations have impaired the organizations' efforts to research the compliance status of Kentucky dischargers and to report the results of that research to their members; to seek regulatory and legislative changes needed to better protect Kentucky's waterways; and to bring litigation to prevent violations of the discharge limitations in the permits and thereby protect the waters affected by Defendants' discharges. All of these activities are essential to fulfilling Plaintiffs' institutional goals.
49. Defendants' failure to submit accurate discharge information frustrates Plaintiffs' daily operations to the extent that these organizations can no longer honor their own monitoring and reporting obligations to their members.
50. Plaintiffs are all "citizens" for the purposes of the Clean Water Act citizen suit provision, 33 U.S.C. § 1365, as defined in section 505(g) of the CWA, 33 U.S.C. § 1365(g).
51. Plaintiffs' injuries are redressable by the relief requested in this Complaint.

STATUTORY AND REGULATORY BACKGROUND

52. Congress passed the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).
53. The Clean Water Act, 33 U.S.C. § 1251 *et seq.*, prohibits the discharge of any pollutant by any person from a point source into waters of the United States unless the discharge complies with various enumerated sections of the CWA. Among other things, the CWA

prohibits discharges that are not authorized by, or are in violation of, the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued by EPA or an EPA-delegated State permitting authority. *See* 33 U.S.C. §§ 1311(a), 1362(12)(A), 1342.

54. Under Section 505(a) of the CWA, 33 U.S.C. § 1365(a), any citizen may commence a civil action on his own behalf against any person who is alleged to be in violation of an effluent standard or limitation. An "effluent standard or limitation" is defined to include "a permit or condition thereof" issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342. *Id.* § 1365(f)(6).

A. MONITORING AND REPORTING REQUIREMENTS

55. The Clean Water Act and its implementing regulations require dischargers to monitor and report their discharges of pollutants. Under the CWA, owners or operators of point sources that discharge pollutants must "(i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods" and "(iv) sample such effluents" as EPA may reasonably require. 33 U.S.C. § 1318(a)(A). This self-monitoring and reporting by dischargers allows the government to determine, among other things, whether the discharger is in violation of effluent limitations applicable to the discharge. *See id.* § 1318(a). The Clean Water Act carries criminal penalties for any person who negligently or knowingly violates permit conditions or other specified sections of the Act, including provisions related to monitoring and reporting. *Id.* § 1319(c).
56. Pursuant to the CWA, EPA has promulgated regulations that establish monitoring, recordkeeping, and reporting requirements. 40 C.F.R. §§ 123.25(a)(12), 122.41(j), (l). Samples and measurements taken for the purpose of monitoring must be representative of

the monitored activity, *id.* § 122.41(j)(1); the permit-holder's records of monitoring information must include, among other things, the date, place, and time of sampling, the analytical techniques used, and the results of such analyses, *id.* § 122.41(j)(3); monitoring must be conducted according to certain approved test procedures, *id.* § 122.41(j)(4); and monitoring results must be reported on a DMR, *id.* § 122.41(l)(4)(i).

57. Kentucky's administrative regulations incorporate these federal monitoring and reporting requirements. *See* 401 Ky. Admin. Regs. 5:065.

B. KENTUCKY'S PERMIT PROGRAM

58. EPA has delegated NPDES permitting authority within Kentucky to the Commonwealth. *See* 33 U.S.C. § 1342(b); Approval of Kentucky's NPDES Program, 48 Fed. Reg. 45,597 (Oct. 6, 1983); Ky. Rev. Stat. Ann. § 224.16-050. Kentucky's program for issuing NPDES permits is known as the KPDES. 401 Ky. Admin. Regs. 5:002(66).
59. "Waters of the United States" within the meaning of the Clean Water Act include any navigable waters or waters that are tributaries of navigable waters. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2. The Kentucky, Big Sandy, and Licking Rivers and their tributaries into which Defendants discharge pollutants are all waters of the United States within the meaning of the Clean Water Act.
60. Defendants' discharges are subject to the terms and conditions of either the KPDES Coal General Permit or, with regard to three of the surface coal mining facilities at issue herein, an individual KPDES permit.
61. Most of the violations alleged herein occurred at facilities regulated under KPDES Coal General Permit No. KYG040000, which was effective from August 1, 2009 until September 30, 2014. [Hereinafter referred to as "the 2009 Coal General Permit."]

62. A new KPDES Coal General Permit went into effect on October 1, 2014. [Hereinafter referred to as “the 2014 Coal General Permit.”]
63. Based on information and belief, Defendants have not applied for coverage under the 2014 Coal General Permit for any of the surface coal mining operations at issue in this Complaint.
64. Defendants’ continuous violations of the 2009 Coal General Permit, as alleged herein, will also constitute violation of the 2014 Coal General Permit, if and when Defendants apply for and are granted coverage under the 2014 Coal General Permit for any of the surface coal mining operations at issue in this Complaint.
65. With the exception of the three individual permits referred to in the following paragraph, all of Defendants’ surface coal mining facilities at issue in this Complaint are regulated under the 2009 Coal General Permit.
66. Plaintiffs also make allegations regarding three of the Defendants’ surface mining facilities that operate under individual KPDES permits. Those facilities operate under KPDES numbers KY005346, KY0078271, and KY0108111.
67. Based on information and belief, all terms and conditions relevant to the allegations in this Complaint are identical on the 2009 Coal General Permit, the 2014 Coal General Permit, and the three individual KPDES permits.
68. Among other terms and conditions, the KPDES permits authorize Defendant Frasure Creek to discharge limited quantities of certain pollutants into Kentucky waters and require accurate monitoring and reporting on the quantity of discharge of these and other pollutants and parameters.

69. As relevant to the allegations herein, the KPDES permits require the Defendants to file reports for at least eight parameters: Flow, Total Suspended Solids, Total Recoverable Iron, Total Recoverable Manganese, Conductivity, Acidity, Alkalinity, and pH. In addition, the permits require the Defendants to measure each of these parameters twice per month, except for Conductivity, Acidity, and Alkalinity, which Defendants must measure once per month for most of the Defendants' operations.

COUNT 1

**VIOLATIONS OF THE CLEAN WATER ACT BY
FAILING TO MONITOR AND/OR
ACCURATELY REPORT POLLUTANT DISCHARGES**

70. Plaintiffs reallege, as if set forth fully herein, each and every allegation contained in the preceding paragraphs.
71. Failure to comply with all conditions of a permit, including the failure to monitor and accurately report discharges, is a violation of the CWA. 33 U.S.C. §§ 1365(f)(6), 1311(a); 40 C.F.R. § 122.41; and 401 KAR 5:065 § 2(1).
72. Under the terms of its KPDES permits, Defendants must take accurate samples and measurements of its discharged effluents, use approved testing procedures and analytical methods, and accurately report the results of its monitoring to the KDNR. Such samples and measurements must be "representative of the volume and nature of the monitored discharge," test procedures for the analysis of pollutants must conform to applicable Kentucky regulations, permittees must demonstrate compliance with parameter limitations by the use of sufficiently sensitive analytical methods, and discharge monitoring results must be summarized and reported using only approved DMR forms.

73. Defendants have violated, and continue or are reasonably likely to continue to violate, conditions of Frasure Creek's KPDES permits with regard to the submission of inaccurate reports regarding its discharged pollutants.
74. Defendants' noncompliance with permit conditions constitutes violations of the Clean Water Act and is grounds for an enforcement action. 40 C.F.R. § 122.41(a). Any citizen may commence a civil action against any person alleged to be in violation of an "effluent standard or limitation," which includes violation of a permit condition. 33 U.S.C. § 1365(a)(1), (f)(6). Defendants are "persons" within the meaning of this provision. *Id.* § 1362(5).
75. Under the terms of Frasure Creek's KPDES permits, on each DMR at issue in this Complaint, Defendants are required to report 14 different measured or calculated values of various effluent parameters per month per outfall, each value is typically reported with between two and five significant digits.
76. Defendants submitted DMRs for months during the first quarter of 2014 that contained identical or nearly identical measurement values for each effluent parameter reported for the same outfall during different months. There were 141 such submissions during the first quarter of 2014. Some or all of the monitoring results reported for those outfalls for those months are inaccurate, in violation of Frasure Creek's permits. *See* Exhibit 1, Attachment 2, Tables 1 and 2 for an itemized summary of the duplicate reporting violations alleged herein.
77. Measured values that are identical, in some instances to the nearest hundredth of a unit of measurement, in repeated months at the same outfall are not realistically possible.
78. Defendants copied and re-filed previously-submitted DMR effluent data.

79. For example, Defendants' DMR submissions for January and February 2014 for KPDES KY0108111, DSMRE#836-0326, outfall #1 repeat all effluent characteristics from the Defendants' submission for the same outfall for October and November 2013, constituting an exact duplication of two sets of 16 effluent characteristics or 32 total.
80. Defendants submitted DMRs that exactly duplicated each of the effluent characteristics from a previous month 112 times during the first quarter of 2014. *See* Exhibit 1, Attachment 2, Table 1.
81. In 29 other instances during the first quarter of 2014, Defendants submitted DMRs that nearly duplicated each of the effluent characteristics for the same outfall from a previous month. *See* Exhibit 1, Attachment 2, Table 2.
82. An example of such near-duplicate DMRs occurred on KPDES KY0108111, DSMRE# 836-0326, outfall #1, where Defendants' DMR submission of 16 effluent characteristics for March 2014 tracked Defendants' submission of the same effluent characteristics for December 2013, with the exception that, rather than report "N/A" as it had done in December, Defendants reported 10 mg/L for the monthly average for TSS and 0.2 mg/L for the monthly average for iron.
83. Defendants repeated submission of inaccurate effluent monitoring data indicates a pattern of chronic and persistent inaccuracy in its monitoring and testing results in violation of federal and state regulations and KPDES permits. Defendants failed to submit and maintain accurate DMRs in accordance with above stated regulations and permit conditions.

84. Each permittee is responsible for ensuring compliance with CWA permits and permit conditions. Failure to submit accurate DMRs is a violation of a condition of Frasure Creek's permits.
85. Defendants violated "an effluent standard or limitation," as defined in section 505(f)(6) of the CWA, 33 U.S.C. § 1365(f)(6), by submitting inaccurate DMR data to the State of Kentucky.
86. By submitting DMRs containing inaccurate data, Defendants failed to "install, use and maintain . . . monitoring equipment or methods" to sample effluents in accordance with section 308(A)(iii) of the CWA, 33 U.S.C. § 1318(A)(iii).
87. Each day that Defendants violate a condition of Frasure Creek's KPDES permits, for each parameter to which the condition applies, is a separate and distinct violation of the Clean Water Act.
88. Defendants' violations described within this Count are violations of a permit or condition thereof issued under CWA § 402, 33 U.S.C. § 1342, as defined by CWA § 505(f), 33 U.S.C. § 1365(f), for which plaintiffs are entitled to relief. Defendants are subject to liability for civil penalties for each day for each violation. 33 U.S.C. § 1365(a)(1), (f)(6); *id.* § 1319(d).
89. As is described more fully in NOI #1 and NOI #2, Defendants have a history of submitting duplicate DMRs. (*See* Exhibit 1, NOI #1, pp. 3-5 for a narrative history of the litigation involving Defendants' prior duplicate DMR filings.)
90. Defendants' pattern and practice of submitting inaccurate data raises an inference that such practice is continuing, and will continue, or is reasonably likely to continue, unless enjoined by a court of law.

91. Plaintiffs reserve the right to add to the specific violations set forth in this Complaint, additional claims based on similar violations upon determining that such claims exist based on information in Defendants' possession or the government's possession that may be made available to Plaintiffs after the filing of this Complaint.

COUNT 2

VIOLATIONS OF THE CLEAN WATER ACT BY DISCHARGING A POLLUTANT IN EXCESS OF PERMIT LIMITS

92. Plaintiffs reallege, as if set forth fully herein, each and every allegation contained in the preceding paragraphs.
93. Plaintiffs, through their investigation of Defendants' DMRs, have identified 43 discrete, self-reported exceedences of monthly average or daily minimum/maximum permit effluent limits by Defendants during the second quarter 2014, which ran from April 2014 to June 2014. A full list of the effluent limit violations is found in Exhibit 1, Attachment 2, Table 3.
94. Each day that Defendants violate a condition of Frasure Creek's KPDES permits, for each parameter to which the condition applies, is a separate and distinct violation of the Clean Water Act. Until the violations contained herein are corrected, Defendants are in a state of continuous violation of CWA § 301(a), 33 U.S.C. § 1311(a).
95. Defendants exceeded an effluent limitation in Frasure Creek's KPDES permits at least 43 times as reported on DMRs during the second quarter of 2014. These exceedences represent at least 765 separate and distinct violations of CWA effluent standards or limitations. *See* 33 U.S.C. § 1311(a) and Ky. Rev. Stat. Ann. § 224.70.110.

96. Plaintiffs reserve the right to add to the specific violations set forth in this Complaint, additional claims based on similar violations upon determining that such claims exist based on information in Defendants' possession or the government's possession that will be made available to Plaintiffs after the filing of this Complaint.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request the following:

1. A jury trial on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure;
2. That the Court enter a judgment declaring, pursuant to 28 U.S.C. § 2201, that Defendants have violated and are in violation of Frasure Creek's KPDES permits and the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1365(a);
3. That the Court enjoin Defendants from operating their surface mining operations in such a manner as will result in further violations of Frasure Creek's KPDES permits and the Clean Water Act, 33 U.S.C. § 1311(a) and 1365(a), and requiring Defendants to take such measures as are necessary to bring each surface mining operation into compliance.
4. That the Court award civil penalties (payable to the United States Treasury) in the amount of \$37,500 per violation per day for each violation. *See* 33 U.S.C. §§ 1365(a), 1319(d); 40 C.F.R. § 19.4 (adjustment of civil monetary penalties for inflation).
5. That the Court award to Plaintiffs their costs, including reasonable attorney and expert witness fees, as authorized by CWA § 505(d), 33 U.S.C. § 1365(d); and
6. That the Court award such other relief as this Court deems just and proper.

This the 13th day of March, 2015.

Respectfully Submitted,

/s/ Mary Varson Cromer

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ADMINISTRATOR

JENNIFER RUHLE

November 14, 2014

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

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

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

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

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

Dear Sir or Madam:

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

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

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

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

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

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

These violations are continuous and ongoing.

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

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

a. Citizens Expose False Reporting Epidemic

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

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

b. The Cabinet shields Frasure Creek from meaningful prosecution

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

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

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

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

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

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

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

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

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

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

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

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

FRASURE CREEK, LLC & TRINITY COAL CORPORATION

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

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

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

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

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

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

II. Description of New Violations

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

- George Santayana

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

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

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

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

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

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

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

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

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

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

III. Notice of Violations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Failure to Accurately Sample and Test Effluent

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

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

e. Self-Reported Exceedances of Permit Conditions

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

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

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

IV. Lack of Diligent Prosecution against Ongoing Violations

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

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

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

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

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

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

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

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

V. The Violations Alleged Are Ongoing

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

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

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

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

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

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

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

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

Frasure Creek is on Notice.

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

Very truly yours,



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

Attachment 2: Tables identifying CWA violations herein alleged.

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CC (via certified mail – return receipt requested):

Eric H. Holder Jr., Attorney General
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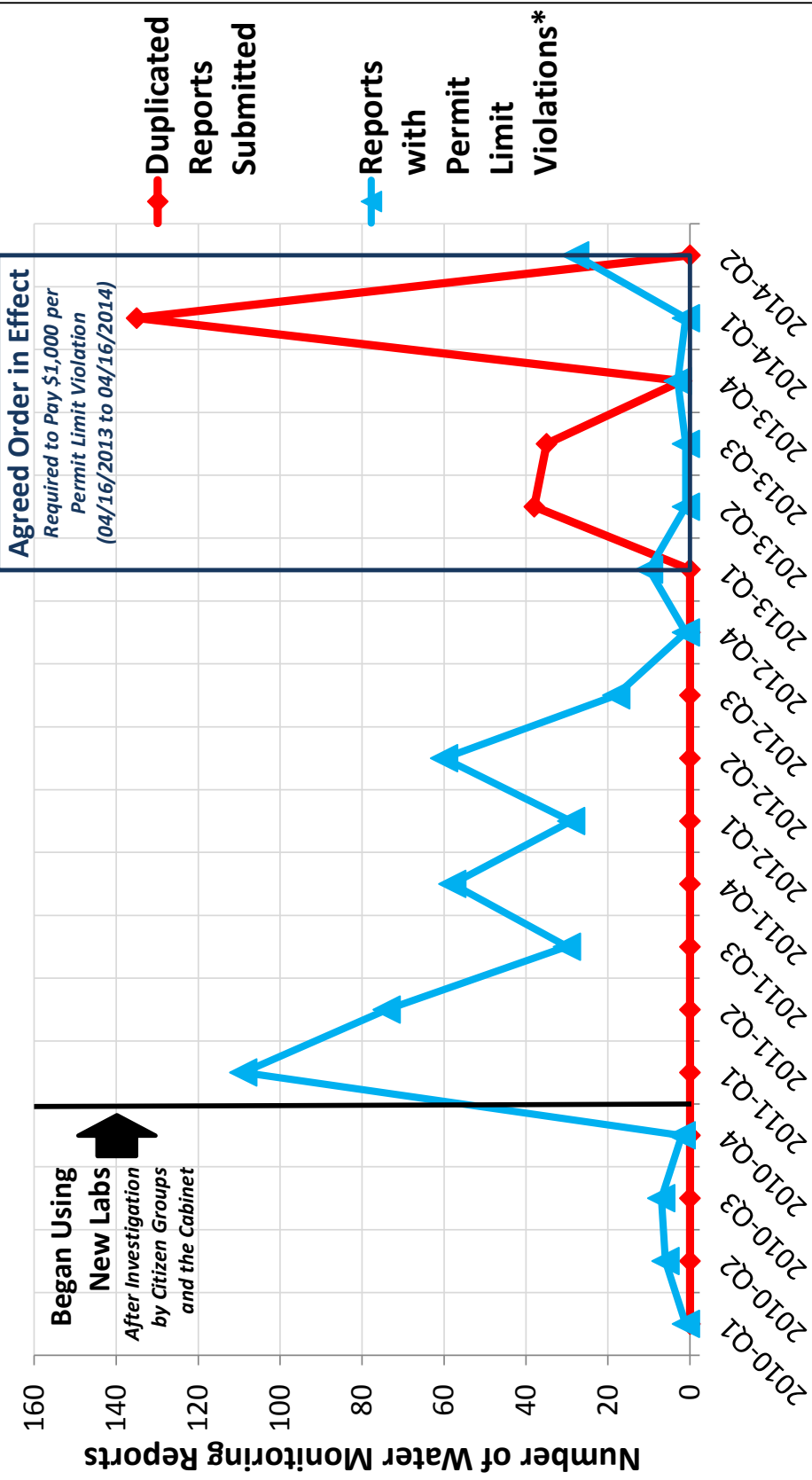
Dr. Len Peters, Secretary
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R. Bruce Scott, Commissioner
Department for Environmental Protection
Kentucky Energy and Environment Cabinet
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ATTACHMENT 1
(1 PAGE)

Pollution and Reporting Violations by Frasure Creek Mining, LLC

Comparison of Self Reported Violations and Duplicated Reports



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

ATTACHMENT 2
(15 PAGES)

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

Table 1. Duplicate DMRs submitted in Quarter 1, 2014

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



December 19, 2014

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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

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

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

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

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

Dear Sir or Madam:

The purpose of this letter is to inform you that Sierra Club intends to sue Frasure Creek Mining, LLC and its affiliate, Trinity Coal Corporation (collectively, “Frasure Creek”), for violations of the federal Clean Water Act and the laws of Kentucky. *Frasure Creek has continued to pollute streams in eastern Kentucky in violation of its permits and has resumed submission of false discharge monitoring reports to government officials.*

As you are aware, three years ago Appalachian Voices, Inc., Waterkeeper Alliance, Inc., Kentuckians For The Commonwealth, Inc., Kentucky Riverkeeper, Inc., and Ms. Pat Banks (collectively, the “Citizen Groups”) discovered that Frasure Creek had repeatedly copied the exact same pollution data from one report to the next and submitted the falsified reports to the Kentucky Energy and Environment Cabinet (“Cabinet”). Now, after an apparent pause in its false reporting, Frasure Creek has resumed this illegal practice. As before, the Cabinet has utterly failed to even notice these flagrant violations of the laws that it is bound to uphold. Frasure Creek’s actions—and the Cabinet’s failures to act—undermine the regulatory framework that safeguards the people and the waters of Kentucky from dangerous pollution.

Because the Cabinet seems incapable of meaningful oversight, the Citizen Groups and Sierra Club must once again step in, both to expose rampant violations of the Clean Water Act and to enforce the law. Accordingly, Sierra Club hereby notifies Frasure Creek of its intent to sue pursuant to § 505(b) of the Clean Water Act (CWA), 33 U.S.C. § 1365(b), for violations of “an

effluent standard or limitation,” as defined under CWA § 505(a)(1)(A) and (f), 33 U.S.C. § 1365(a)(1)(A) and (f). Specifically, Frasure Creek has once again submitted numerous false discharge monitoring reports (DMRs) to the Cabinet, in addition to repeatedly discharging pollutants in exceedance of numerical limits contained in its CWA permits. Through review of public documents, the Citizen Groups have discovered that Frasure Creek has resumed its unlawful practice of submitting the same monitoring data on multiple DMRs. The false reporting violations noticed herein are exactly the same type of reporting violations by Frasure Creek that the groups uncovered and sought to enforce in 2010, only this time, the duplications are even more extensive.

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

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

These violations are continuous and ongoing.

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

a. Citizens Expose False Reporting Epidemic

In 2010, while reviewing DMRs submitted by Frasure Creek between January 2008 and December 2009, the Citizen Groups documented numerous instances in which discharge monitoring data had been copied verbatim from one DMR to another, repeating the exact same purported analytical results for 42 separate values on two or more different DMRs. Throughout

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

the same time period, Frasure Creek did not report a single violation of the numerical pollution limits in its Clean Water Act permits.²

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

b. The Cabinet shields Frasure Creek from meaningful prosecution

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

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

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

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

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

oppose the Citizen Groups' intervention and sought—unsuccessfully—to have the Franklin Circuit's intervention ruling reversed.⁴

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

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

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

After changing laboratories, Frasure Creek immediately began self-reporting significant pollution exceedances.⁸ On June 28, 2011, the Citizen Groups served a second NOI on Frasure

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

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

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

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

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

Creek for *more than 2,800* pollution violations Frasure Creek self-reported during the first quarter of 2011.

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

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

Since the Agreed Order was entered, Frasure Creek has submitted at least 34 DMRs with self-reported pollution exceedances that have not been enforced by the Cabinet. This number is small in comparison to self-reported exceedances during the period before the entry of the Agreed Order. The reduction in number of exceedances coincides with Frasure Creek’s resumption of false reporting.¹⁰

II. Description of New Violations

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

⁹ After receiving the Citizen Groups’ second NOI, the Cabinet once again stepped in with a protective enforcement action, this time in the form of an Administrative Complaint in the Cabinet’s Office of Administrative Hearings filed on the last day before the Citizen Groups’ notice period ran. The Cabinet and Frasure Creek negotiated the settlement that became the April 16, 2013 Final Order behind closed doors without any participation from the Citizen Groups, despite the fact that the Citizen Groups had been allowed to intervene in the enforcement as full parties. The Citizen Groups submitted written objections to the order, but there was no indication that these were even read by the Cabinet. The Citizen Groups filed a petition for review in the Franklin Circuit Court alleging that the Cabinet, in reaching and approving a settlement agreement with Frasure Creek and without allowing the citizens, as parties, to participate in the process, violated the citizens’ due process rights. On November 24, 2014, the Franklin Circuit ruled that the Cabinet had, in fact, acted arbitrarily and violated due process. The Court remanded the action to the Cabinet for full administrative hearing on the merits. Order, Franklin Cir. No. 10-CI-1867, November 24, 2014.

¹⁰ The Agreed Order, while entered in April of 2013, provides for stipulated penalties for all self-reported effluent limit exceedances beginning in the third quarter of 2012.

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Just after the settlement resolving Frasure Creek's 2011-2013 pollution violations expired, Frasure Creek began duplicating DMRs again, despite its continued use of J&M Monitoring, Inc., a certified laboratory.¹¹ After another records request, the Citizen Groups discovered that, since the second quarter of 2013, Frasure Creek has submitted at least 135 identically duplicated or nearly identically duplicated¹² DMRs to the Cabinet. ***In fact, 48% of all DMRs submitted by Frasure Creek for the first quarter of 2014 contained the exact same data that Frasure Creek had already submitted for previous monitoring periods.***¹³ At the same time—and not surprisingly—the number of self-reported exceedances of permit limits was extremely low during this period.¹⁴ (See “Attachment 1” chart titled, “Pollution and Reporting Violations by Frasure Creek Mining, LLC”). And, as before, of all the duplicated DMRs submitted, not a single one reports an exceedance of a numerical permit limit. In fact, in some cases permit limit violations were replaced with low values in duplicate DMRs.

While Frasure Creek's false reporting is a clear violation of the law, given the history of false DMR reporting in Kentucky, the Cabinet's complete failure to detect or enforce these recurrent violations is an unforgivable dereliction of its duties to the citizens of the Kentucky. In defense of its proposed Consent Judgment, Cabinet Commissioner Bruce Scott proclaimed that the problems had been corrected. In testimony before the Franklin Circuit Court, Commissioner Scott acknowledged that “[t]he Cabinet should have been doing something it wasn't.”¹⁵ He also acknowledged “concerns as to whether or not the data [produced by these labs] was [sic]

¹¹ In 2011, the Kentucky General Assembly passed legislation authorizing the Cabinet to develop a lab certification program. The Cabinet has done so and the program took effect at the beginning of 2014. Before that time, Frasure Creek hired labs that are nationally certified; however, false reporting problems continue and, if anything, may be even more common.

¹² In numerous instances, Frasure Creek has submitted DMRs with “NA” reported for TSS, Fe and Mg in one quarter and numerical values for these parameters in the following quarter. With the exception of these few values, the DMRs are identical. The first DMRs in these pairs are submitted with requests for alternate limits due to unusual discharge (rain) events. Presumably, Frasure Creek reports “NA” because there is not an upper limit on effluent for those parameters during a qualifying discharge event. Aside from the fact that companies are still required to report the sample measurements, which Frasure Creek has failed to do, in many instances, the DMRs submitted for the following quarter, for the same outfall, contain the exact same reported measurements but replace “NA” with a numerical value. And so, the DMR is not an exact duplicate of the previous quarter, but only because three of the measurements have been updated while the others are identical.

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

¹⁴ Importantly, none of these self-reported pollution exceedances have been reported on falsely filed, duplicate DMRs

¹⁵ Transcript of Hearing at 53: 12-14, testimony by Bruce Scott, Energy and Env't Cabinet v. Frasure Creek Mining, LLC, August 31, 2011.

representative of what the outfall discharges actually are.”^{16,17} Despite this, he stated that he believed that the Cabinet had, “corrected the problem.”¹⁸

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

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

III. Notice of Violations:

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

- Quarter 1, 2014: 106 duplicate DMRs.¹⁹ **For a DMR-specific identification of Frasure Creek’s submissions of false DMR data noticed in this letter, please see “Table 1: Duplicate DMRs submitted in Quarter 1, 2014” in Attachment 2.**
- Quarter 1, 2014: 29 near-duplicate DMRs (excluding the first in a matching set; the first matching DMRs were all from 2013). **For a DMR-specific identification of Frasure Creek’s submissions of false DMR data noticed in this letter, please see “Table 2: Near-Duplicate DMRs submitted in Quarter 1, 2014” in Attachment 2.**
- Quarters 1 and 2, 2014: 949 self-reported effluent limit violations. **For a DMR-specific identification of Frasure Creek’s submissions of self-reported violations of daily maximum and monthly average effluent limitations, please see “Table 3: Self-Reported Effluent Violations Submitted in Quarters 1 & 2, 2014” in Attachment 2.**

¹⁶ Transcript of Hearing at 33: 20-23, testimony by Bruce Scott, Energy and Env’t Cabinet v. Frasure Creek Mining, LLC, August 31, 2011.

¹⁷ Although the Cabinet recognized the fundamental problems involving these shoddy laboratories, the Cabinet never questioned whether Frasure Creek exercised due diligence in hiring these labs, nor did it attempt to calculate the financial benefit Frasure Creek incurred by hiring substandard labs and avoiding compliance with the law.

¹⁸ Transcript of Hearing at 34: 3-7, testimony by Bruce Scott, Energy and Env’t Cabinet v. Frasure Creek Mining, LLC, August 31, 2011.

¹⁹ Excluding the first in a matching set; the first matching DMRs were all from 2013.

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

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

The repeated submission of duplicate or conflicting DMRs, on its face, raises suspicion regarding the validity of data submitted in all of Frasure Creek's DMRs on file with the KDNR for the past seven years.²⁰ Therefore, Sierra Club 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.

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

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

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

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

²⁰ The Citizen Groups have reviewed DMRs submitted by Frasure Creek since 2008.

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

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

The repeated submission of duplicate DMRs that are fraudulent, or otherwise false, on their face raises suspicion regarding the validity of monitoring data found in all of Frasure Creek's DMRs on file with the KDNR for the past five years. Therefore, Sierra Club 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 its monitoring equipment in order to fulfill its obligations under the CWA, failure to do so equates to a violation. This constitutes ongoing violations for each day for every outfall and every effluent characteristic listed in the applicable CWA permit, which accrues penalties per day and per limit until the violations cease.

d. Failure to Accurately Sample and Test Effluent

The repeated submission of duplicate DMRs that are fraudulent, or otherwise false, on their face raises suspicion regarding the validity of sampling methods used by Frasure Creek in creating its DMRs on file with the KDNR for the past five years. Therefore, Sierra Club 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.

e. Self-Reported Exceedances of Permit Conditions

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

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

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

IV. Lack of Diligent Prosecution against Ongoing Violations

The Cabinet has failed to prosecute Frasure Creek for its violations since entry of the Agreed Administrative Order of April 16, 2013.²¹ Since entry of the Agreed Administrative Order, Frasure Creek has submitted at least 43 DMRs containing self-reported exceedance violations that the Cabinet has failed to enforce. Even more disturbing, the Cabinet has failed to prosecute any reporting violations.

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

²¹ The Agreed Administrative Order purported to release Frasure Creek from liability for known violations and any unknown “like violations”.

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

Many of these reporting violations occurred while Frasure Creek was in bankruptcy proceedings. While bankruptcy law may limit the ability of citizens to enforce the Clean Water Act, the Cabinet is under no such limitation.²² Indeed, the Cabinet's authority to proceed with regulatory enforcement during a permittee's pending bankruptcy is critical to preventing bankruptcy from becoming a "haven for wrongdoers." *In re First Alliance Mortg. Co.*, 264 B.R. 634, 645 (C.D. Cal. 2001) (citation omitted). The Cabinet had the right and opportunity to enforce Clean Water Act provisions, as well as Frasure Creek's specific permit conditions, and neglected to do so.

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

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

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

V. The Violations Alleged Are Ongoing

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

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

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

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Sierra Club reserves the right to allege additional CWA violations based on the same pattern of violations set forth herein, upon determining that such claims exist. Sierra Club takes these violations very seriously and intends to enforce any and all of Frasure Creek's violations of the CWA.

Sierra Club believes that this letter provides sufficient information to place Frasure Creek on notice of its 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, Sierra Club will bring enforcement actions under CWA §§ 505(b) and 301(a), 33 U.S.C. §§ 1365(b), 1311(a). As noted in CWA § 309(d), 33 U.S.C. § 1319(d), 40 C.F.R. § 19.4, and K.R.S. 224.99-010, violators of the CWA are subject to civil monetary penalties in amounts of up to \$37,500 per violation, per day. Under K.R.S. § 224.99-010, violators are subject to penalties in the amount of \$25,000 per day.

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

Frasure Creek is on Notice.

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,

Aaron Isherwood
Sierra Club
85 Second St., 2d Floor
San Francisco, CA 94105-3441
Phone: 415-977-5680
aaron.isherwood@sierraclub.org

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

Attachment 2: Tables identifying CWA violations herein alleged.

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CC (via certified mail – return receipt requested):

Eric H. Holder Jr., Attorney General
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Gina McCarthy, Administrator
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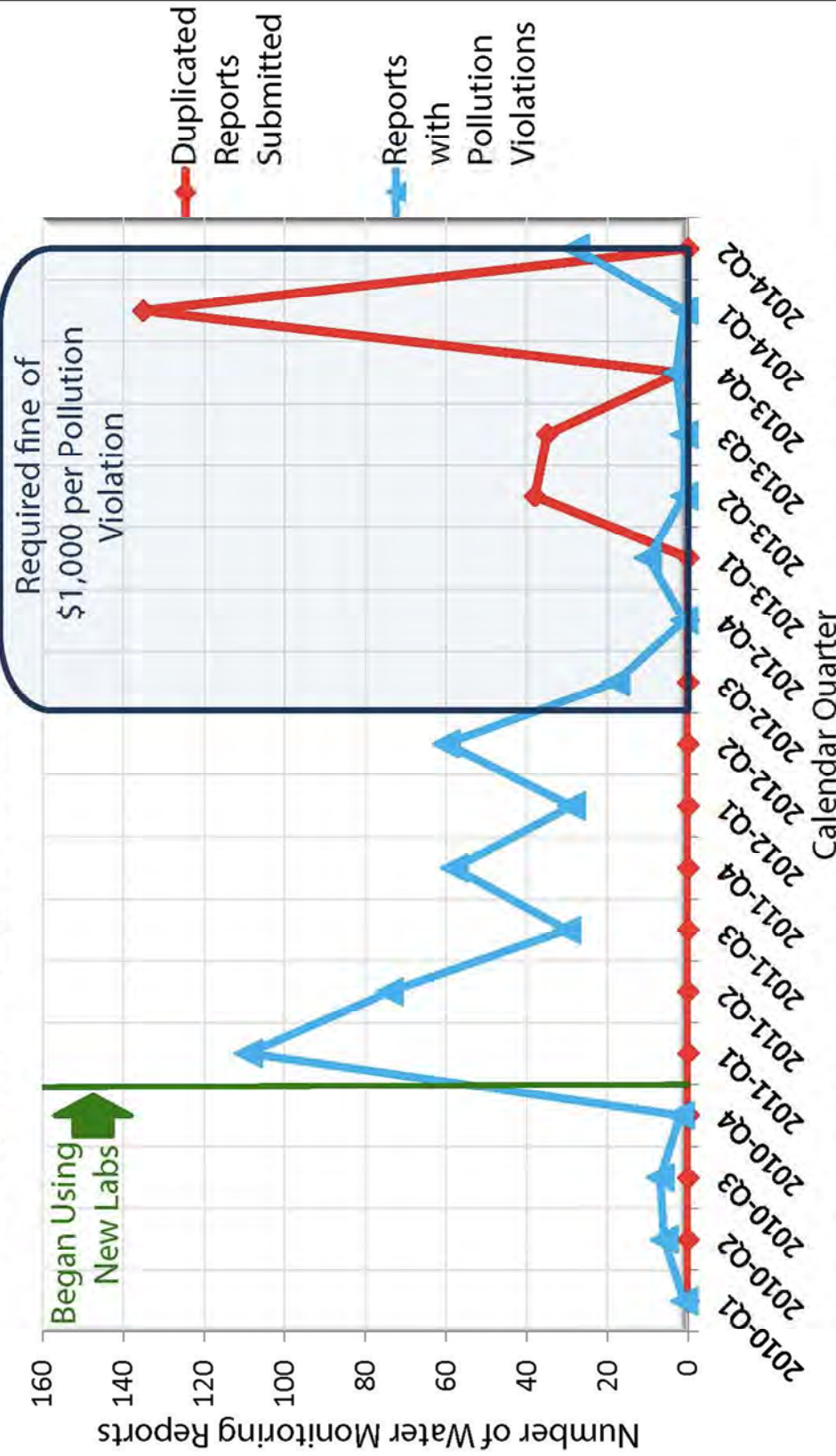
Dr. Len Peters, Secretary
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Frankfort, KY 40601

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

ATTACHMENT 1
(1 PAGE)

Frasure Creek Mining- Water Pollution Reports

Self-Reported Violations Decrease when Reports are Duplicated



Data compiled by Appalachian Voices, based on reports submitted to the Kentucky Energy and Environment Cabinet by FrasureCreek Mining.

ATTACHMENT 2
(15 PAGES)

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

Table 1. Duplicate DMRs submitted in Quarter 1, 2014

DSMRE #	KPDES #	Outfall #	Monitoring Period	Nature of Violation	Description of Violation
836-0326	KY0108111	1	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013-11/2013 repeated for 01/2014-02/2014
836-0391	KYG045764	1	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013-11/2013 repeated for 01/2014-02/2014
836-0391	KYG045764	7	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
836-0393/877-0209	KYG078271	EP-02/1	4 th Quarter 2013 1 st Quarter 2014	4 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014) ²³
836-0393	KYG078271	EP1	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 10/2013 repeated for 01/2014
836-0394	KYG046408	2	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 11/2013-12/2013 repeated for 02/2014-03/2014
836-0394	KYG046408	33	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 11/2013-12/2013 repeated for 02/2014-03/2014
836-0394	KYG046408	34	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
836-0395	KYG046409	11	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014

²³ For one month during the quarter they reported different data on the two permits. Those two different sets were then repeated the next quarter.

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

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

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

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877-0209	KYG046282	14	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
877-0209	KYG046282	15B	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 10/2013 repeated for 01/2014
877-0209	KYG046282	15C	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
877-0209	KYG046282	16	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 10/2013 repeated for 01/2014
877-0210	KYG046469	DO-2	1 st -4 th Quarters 2013 1 st Quarter 2014	2 Duplicate DMRs Reported ²⁴	All data from 02/2013- 03/2013 repeated for the next four quarters (05/2013-06/2013, 08/2013-09/2013, 11/2013- 12/2013 and 02/2014- 03/2014)
898-0865	KYG045749	44	4 th Quarter 2013 1 st Quarter 2014	1 Duplicate DMR Reported	All data from 12/2013 repeated for 03/2014
898-0865	KYG045749	55	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013- 11/2013 repeated for 01/2014-02/2014
898-0865	KYG045749	56	4 th Quarter 2013 1 st Quarter 2014	2 Duplicate DMRs Reported	All data from 10/2013- 11/2013 repeated for 01/2014-02/2014
898-0865	KYG045749	59	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)
898-0866	KYG046049	1	4 th Quarter 2013 1 st Quarter 2014	3 Duplicate DMRs Reported	All data from quarter 4 2013 (10/2013-12/2013) repeated for quarter 1 2014 (01/2014-03/2014)

²⁴ Citizen Groups give formal notice of the two duplications that occurred in the first quarter of 2014. However, this same set of data was duplicated six additional times in 2013.

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

DSMRE #	KPDES #	Outfall #	Monitoring Period	Nature of Violation	Description of Violation
836-0326	KY0108111	1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave.
836-0391	KYG045764	1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave.
836-0391	KYG045764	8	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and max. and 0.2 mg/L for iron monthly ave. and max.
836-0393	KYG078271	EP1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 11/13 repeated for 02/14 except that the values of 82 mg/L and 154 mg/L were replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave. respectively ²⁵
836-0393	KYG078271	EP1	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 12/13 repeated for 03/14 except that the values of 57 mg/L and 104 mg/L were replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave. respectively
836-0394/ 836-0395	KYG046408/ KYG046409	2	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 10/13 repeated for 01/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave., 0.2 mg/L for iron monthly ave. and 0.2 mg/L for manganese monthly ave.
836-0396	KYG045938	2	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 10/13 repeated for 01/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave. and 0.2 mg/L for iron monthly ave.
836-0396	KYG045938	2	Quarter 4 2013, Quarter 1 2014	1 Duplicate DMR Reported	All data from 11/13 repeated for 02/14 except that the value N/A was replaced with 10 mg/L for TSS monthly ave.

²⁵ In most instances listed in Table 2, the first DMR in the duplicate set reported "NA" for TSS, iron, and/or manganese. The rows in this table that are highlighted in yellow represent DMRs for which Frasure Creek reported a numerical value (all of these numerical values are exceedances of permit limits) for TSS, iron and or manganese and then replaced only those values on the next DMR.

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

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

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

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

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

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

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

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

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