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June 28, 2011

VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED

ICG HAZARD, LLC
1021 Tori Drive
Hazard, KY 41701

ICG HAZARD, LLC
c/o CT Corporation System
306 W. Main Street, Suite 512
Frankfort, KY 40601

ICG KNOTT COUNTY, LLC
P.O. Box 102
Kite, KY 41828

ICG KNOTT COUNTY, LLC
c/o CT Corporation System
306 W. Main Street, Suite 512
Frankfort, KY 40601

ICG EAST KENTUCKY, LLC
1021 Tori Drive
Hazard, KY 41701

ICG EAST KENTUCKY, LLC
c/o CT Corporation System
306 W. Main Street, Suite 512
Frankfort, KY 40601

POWELL MOUNTAIN, LLC
1762 Bonny Blue Road
Saint Charles, VA 24282

POWELL MOUNTAIN, LLC
c/o CT Corporation System
306 W. Main Street, Suite 512
Frankfort, KY 40601

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

Dear Sir or Madam:

Appalachian Voices, Inc., Waterkeeper Alliance, Inc., Kentuckians for the Commonwealth, Inc. (“KFTC”), Kentucky Riverkeeper, Inc., Ms. Pat Banks, Ms. Lanny Evans, Mr. Thomas H. Bonny, and Mr. Winston Merrill Combs (collectively, “Appalachian Voices”) hereby place ICG Hazard, LLC (“ICG Hazard”), ICG Knott County, LLC (“ICG Knott”), ICG East Kentucky, LLC (“ICG East”), and Powell Mountain, LLC (“Powell Mountain”) (collectively “ICG Entities”) on notice of their intent to sue aforementioned entities pursuant to § 505(b) of the Clean Water Act (“CWA”), 33 U.S.C. § 1365(b), for violations of “an effluent

standard or limitation” pursuant to CWA §§ 505(a)(1)(A) and (f), 33 U.S.C. §§ 1365(a)(1)(A) and (f).

Under CWA § 301(a), 33 U.S.C. § 1311(a) and K.R.S. § 224.70-110, 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 and K.R.S. § 224.16-050. In order to be in compliance with permit conditions and CWA statutory requirements, owners and operators of point sources are required to comply with all numerical effluent limitations promulgated under CWA § 301(b), 33 U.S.C. § 1311(b) and also found in 401 K.A.R. 5:065 § 2(1) (citing to 40 C.F.R. § 122.41(a)). Violation of an “effluent standard or limitation” subjects the discharger to citizen suits under CWA §§ 505(a)(1)(A) and (f).

The ICG Entities each have violated, and continue to violate, “an effluent standard or limitation” under CWA §§ 505(a)(1)(A) and (f), 33 U.S.C. §§ 1365(a)(1)(A) and (f), in reference to Kentucky Pollutant Discharge Elimination System (“KPDES”) Coal General Permit No. KYG040000 (the “General Permit”), issued by the Kentucky Department of Environmental Protection, Division of Water (“KDOW”) pursuant to CWA § 402(b), 33 U.S.C. § 1342(b) and K.R.S. § 224.16-050. 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. In the first quarter of 2011, the ICG Entities collectively violated an effluent standard or limitation 1,428 times (**please see the item listed under heading “I.” appended hereto as Attachment 1**).

I. Lack of Diligent Prosecution against Ongoing Violations

In a complaint filed on December 3, 2010 in the Franklin Circuit Court of the Commonwealth of Kentucky (the “Cabinet’s Compl”), the Kentucky Energy and Environment Cabinet (the “Cabinet”) alleged numerous violations of CWA permit conditions by the ICG Entities. Cabinet’s Compl, Ky. Energy & Env’t Cabinet v. ICG Hazard, No. 10-CI-01868, 2010 WL 5800369 (Franklin Cir. Ct., filed Dec. 3, 2010) (**appended hereto as Attachment 2**). These alleged violations include but are not limited to failure to submit any Discharge Monitoring Reports (“DMRs”) for certain outfalls, failure to accurately report data, and failure to comply with permit limits. Cabinet’s Compl. at 10.

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 alleged in the Cabinet’s Compl, and many or all of the violations contained therein are ongoing. Appalachian Voices therefore intends to sue the ICG Entities to enforce each of the violations alleged by the Cabinet in the Cabinet’s Compl.¹

¹ Appalachian Voices is aware that certain of the violations alleged in the Cabinet’s Complaint were also alleged in Appalachian Voices’ October 7, 2010 notice of intent to sue ICG Hazard, LLC and ICG Knott County, LLC. The notice provided by this letter is intended to cover all violations alleged in the Cabinet’s Complaint for which notice was not provided on October 7, 2010.

II. Self-Reported Exceedances of Permit Conditions

In the first quarter of 2011, the ICG Entities collectively committed 1,428 CWA permit violations by discharging pollutants into the waters of Kentucky above permit limitations. The General Permit requires permit-holders 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 reporting period, 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).

a. ICG Hazard

DMRs on file with the Kentucky Department of Natural Resources (“KDNR”) indicate ICG Hazard’s failure 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, ICG Hazard failed to comply with specific effluent limitation parameters 1,210 times in the first quarter of 2011. Such failures constitute violations of CWA § 301(a), 33 U.S.C. § 1311(a), and K.R.S. § 224.70-110. **For a DMR-specific identification of ICG Hazard’s self-reported exceedances/violations of effluent limitations, please see the items listed under heading “II.” in Attachment 1.**

Based on the methodology described previously, ICG Hazard self-reported the following violations in the first quarter of 2011:

- In January 2011:
 - 15 exceedances of the monthly average permit limit for total recoverable iron, total recoverable manganese, and total suspended solids, totaling 465 separate violations.
 - 2 exceedances of the daily maximum permit limit for total recoverable manganese and 5 exceedances of either the daily maximum or minimum permit limit for pH, totaling 7 separate violations.
- In February 2011:
 - 15 exceedances of the monthly average permit limit for total recoverable iron, total recoverable manganese, total suspended solids, and alkalinity and acidity, totaling 420 separate violations.

- 3 exceedances of the daily maximum permit limit for total recoverable iron, and 1 exceedance of the daily minimum permit limit for pH, totaling 4 separate violations.
- In March 2011:
 - 10 exceedances of the monthly average permit limit for total recoverable manganese, and total suspended solids, totaling 310 separate violations.
 - 4 exceedances of the daily maximum permit limits for total recoverable iron and total recoverable manganese, totaling 4 separate violations.

b. ICG Knott

DMRs on file with KDNR show a failure by ICG Knott 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, ICG Knott failed to comply with specific effluent limitations 95 times during the first quarter 2011. Such failures constitute violations of CWA § 301(a), 33 U.S.C. § 1311(a), and K.R.S. § 224.70-110. **For a DMR-specific identification of ICG Hazard's self-reported exceedance/violation of effluent limitations, please see the items listed under heading "III." in Attachment 1.**

ICG Knott self-reported the following violations in the first quarter of 2011:

- In January 2011:
 - 2 exceedances of the monthly average permit limit for total suspended solids, totaling 62 separate violations.
 - 2 exceedances of daily maximum permit limits for total suspended solids and total recoverable iron, totaling 2 separate violations.
- In March 2011:
 - 1 exceedance of the monthly average permit limit for recoverable manganese, totaling 31 separate violations.

c. ICG East

DMRs on file with KDNR show a failure by ICG East 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, ICG East failed to comply with specific effluent limitations 123 times during the first quarter of 2011. Such failures constitute violations of CWA § 301(a), 33 U.S.C. § 1311(a), and K.R.S. § 224.70-110. **For a DMR-specific identification of ICG Hazard's self-reported exceedance/violation of effluent limitations, please see the items listed under heading "IV." in Attachment 1.**

ICG East self-reported the following violations in the first quarter of 2011:

- In January 2011:
 - 3 exceedances of the monthly average permit limit for total suspended solids, totaling 93 separate violations.

- In February 2011:
 - 1 exceedance of the monthly average permit limit for total suspended solids, totaling 28 separate violations.
 - 1 exceedance of daily maximum permit limits for total recoverable iron, totaling 1 violation.
- In March 2011:
 - 1 exceedance of daily maximum permit limits for total suspended solids, totaling 1 violation.

III. 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. Appalachian Voices believes that the ICG Entities’ collective history of non-compliance with permit terms, in addition to the violations cited herein, creates a reasonable likelihood that the companies will continue to pollute in the future.

Based on the ICG Entities’ apparent pattern and practice of repeatedly falsifying data on DMRs and violating effluent limitations by discharging pollutants in excess of permit limits, Appalachian Voices reserves the right to allege additional CWA violations based on the same pattern of violations set forth herein, upon determining that such claims exist. Appalachian Voices takes these violations very seriously and intends to enforce any and all of the ICG Entities’ violations of the CWA that have occurred within the statute of limitations.

Appalachian Voices believes that this letter (including the attached Appendix) provides sufficient information to place the ICG Entities 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, Appalachian Voices 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, 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.

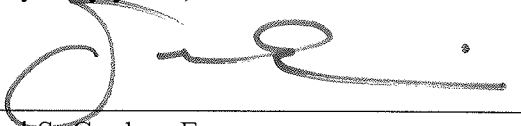
This letter is sent on behalf of: Appalachian Voices, Inc. (contact person: Ms. Willa Mays, Executive Director, 191 Howard Street, Boone, North Carolina 28607, Phone: (828) 262-1500); Waterkeeper Alliance, Inc. (contact person: Mr. Scott Edwards, Director of Advocacy, 50 South Buckhout Street, Suite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

Merrill Combs, 7225 Old Boonesboro Road, Winchester, Kentucky 40391, Phone: (859) 595-9637.

Appalachian Voices, Inc., Waterkeeper Alliance, Inc., Kentucky Riverkeeper, Inc., Kentuckians for the Commonwealth, Inc., Ms. Pat Banks, Ms. Lanny Evans, Mr. Thomas H. Bonny, and Mr. Winston Merrill Combs are represented in this matter by Karl S. Coplan and Daniel E. Estrin, Esqs., Pace Environmental Litigation Clinic, Inc., 78 North Broadway, White Plains, New York 10603, Phone: (914) 422-4343, Lauren H. Waterworth, Esq., Waterworth Law Offices, PLLC, P.O. Box 254, Boone, North Carolina, 28607, Phone: (828) 355-9750, Mary Cromer, Esq., Appalachian Citizens' Law Center, Inc., 317 Main Street, Whitesburg, Kentucky 48158, Phone: (606) 633-3929, and Burke A. Christensen, Esq., 350 Lancaster Avenue, Richmond, Kentucky 40467, Phone: (859) 622-1120.

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: Appendix identifying CWA violations alleged herein

Attachment 2: Complaint, Ky. Energy & Env't Cabinet v. ICG Hazard, LLC, No. 10-CI-01868 (Franklin Cir. Ct. Dec. 3, 2010)

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CC (via certified mail—return receipt requested):

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Frankfort, KY 40601

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

ATTACHMENT 1

Appendix: Alleged Clean Water Act Violations by ICG Entities

I. ICG Entities Combined: Self Reported Exceedances

ICG Entity	Total Number of Violations
ICG Hazard	1,210
ICG Knott	95
ICG East	123
Total Number of ICG Self Reported Permit Violations	1,428

II. ICG Hazard: Self-Reported Exceedances

DSMRE #	KPDES #	Outfall #	Monitoring Period	Effluent Characteristic	Permit Limits	Reported Discharge	Number of Violations
813-0291	KYG041123	4	1 st Quarter 2011	Total Suspended Solids	35.0 mg/l (monthly av.)	530 mg/l (monthly av. for 1/2011)	31
					70.0 mg/l (daily max.)	530 mg/l (daily max. for 1/2011)	
813-0291	KYG041123	4	1 st Quarter 2011	Total Recoverable Iron	3.5 mg/l (monthly av.)	10.4 mg/l (monthly av. for 1/2011)	31
					4.0 mg/l (daily max.)	10.4 mg/l (daily max. for 1/2011)	
813-0291	KYG041123	4	1 st Quarter 2011	Total Recoverable Manganese	2.0 mg/l (monthly av.)	7.48 mg/l (monthly av. for 1/2011)	31
					4.0 mg/l (daily max.)	7.48 mg/l (daily max. for 1/2011)	
813-0291	KYG041123	4	1 st Quarter 2011	pH	9.0 SU (daily max.)	10.29 SU (daily max. for 1/2011)	1
813-0293	KYG044802	9	1 st Quarter 2011	Total Suspended Solids	35.0 mg/l (monthly av.)	289 mg/l (monthly av. for 2/2011)	28
					70.0 mg/l (daily max.)	562 mg/l (daily max. for 2/2011)	
813-0294	KYG046108	4	1st Quarter 2011	pH	9.0 SU (daily max.)	9.25 SU (daily max. for 1/2011)	1
813-0294	KYG046108	5	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.256 mg/L (monthly av. for 3/2011)	31
813-0294	KYG046108	7	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.385 mg/L (monthly av. for 3/2011)	31
813-0294	KYG046108	9	1st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	60.5 mg/L (monthly av. for 2/2011)	28
					70 mg/L (daily max.)	114 mg/L (daily max. for 2/2011)	

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DSMRE #	KPDES #	Outfall #	Monitoring Period	Effluent Characteristic	Permit Limits	Reported Discharge	Number of Violations
					max.)	max. for 2/2011)	
813-0294	KYG046108	9	1st Quarter 2011	Total Recoverable Iron	4.0 mg/L (daily max.)	4.67 mg/L (daily max. for 2/2011)	1
813-0294	KYG046108	9	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.204 mg/L (monthly av. for 1/2011)	31
					4.0 mg/L (daily max.)	4.01 mg/L (daily max. for 1/2011)	
813-0294	KYG046108	9	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.88 mg/L (monthly av. for 3/2011)	31
					4.0 mg/L (daily max.)	5.1 mg/L (daily max. for 3/2011)	
813-0294	KYG046108	9	1st Quarter 2011	pH	9.0 SU (daily max.)	9.47 SU (daily max. for 1/2011)	1
813-8018	KYG043086	3	1 st Quarter 2011	Total Suspended Solids	35.0 mg/l (monthly av.)	530 mg/l (monthly av. for 1/2011)	31
					70.0 mg/l (daily max.)	530 mg/l (daily max. for 1/2011)	
813-8018	KYG043086	3	1 st Quarter 2011	Total Recoverable Iron	3.5 mg/l (monthly av.)	10.4 mg/l (monthly av. for 1/2011)	31
					4.0 mg/l (daily max.)	10.4 mg/l (daily max. for 1/2011)	
813-8018	KYG043086	3	1 st Quarter 2011	Total Recoverable Manganese	2.0 mg/l (monthly av.)	7.48 mg/l (monthly av. for 1/2011)	31
					4.0 mg/l (daily max.)	7.48 mg/l (daily max. for 1/2011)	
813-8018	KYG043086	3	1 st Quarter 2011	pH	9.0 SU (daily max.)	10.29 SU (daily max. for 1/2011)	1
813-8019	KYG043598	3	1st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	39.5 mg/L (monthly av. for 1/2011)	31
860-0463	KYG045985	2	1st Quarter 2011	pH	6.0 SU (daily min.)	5.8 SU (daily min. for 1/2011)	1
866-0281	KYG043540	15	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.14 mg/L (monthly av. for 2/2011)	28
866-0281	KYG043540	15	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.9 mg/L (monthly av. for 1/2011)	31
866-0281	KYG043540	17	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.32 mg/L (monthly av. for 2/2011)	28

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DSMRE #	KPDES #	Outfall #	Monitoring Period	Effluent Characteristic	Permit Limits	Reported Discharge	Number of Violations
866-0281	KYG043540	17	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.85 mg/L (monthly av. for 1/2011)	31
866-0281	KYG043540	20	1st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	42 mg/L (monthly av. for 2/2011)	28
866-0281	KYG043540	24	1st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	70 mg/L (monthly av. for 3/2011)	31
					70 mg/L (daily max.)	133 mg/L (daily max. for 3/2011)	
866-0281	KYG043540	24	1st Quarter 2011	Total Recoverable Iron	4.0 mg/L (daily max.)	4.75 mg/L (daily max. for 3/2011)	1
866-0281	KYG043540	31	1st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	40.5 mg/L (monthly av. for 2/2011)	28
					70 mg/L (daily max.)	81 mg/L (daily max. for 2/2011)	
866-0281	KYG043540	31	1st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	40.5 mg/L (monthly av. for 3/2011)	31
866-0295	KYG045542	1	1 st Quarter 2011	Total Recoverable Manganese	2.0 mg/l (monthly av.)	2.57 mg/l (monthly av. for 2/2011)	28
866-0295	KYG045542	2	1 st Quarter 2011	Total Suspended Solids	35.0 mg/l (monthly av.)	73.5 mg/l (monthly av. for 2/2011)	28
					70.0 mg/l (daily max.)	147 mg/l (daily max. for 2/2011)	
866-0295	KYG045542	2	1 st Quarter 2011	Total Recoverable Iron	4.0 mg/l (daily max.)	4.51 mg/l (daily max. for 2/2011)	1
866-0295	KYG045542	6	1 st Quarter 2011	Total Suspended Solids	35.0 mg/l (monthly av.)	91 mg/l (monthly av. for 2/2011)	28
					70.0 mg/l (daily max.)	170 mg/l (daily max. for 2/2011)	
866-0295	KYG045542	6	1 st Quarter 2011	Total Recoverable Iron	4.0 mg/L (daily max.)	5.63 mg/l (daily max. for 2/2011)	1
897-0446	KYG046154	1	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	3.09 mg/L (monthly av. for 3/2011)	31
897-0446	KYG046154	1	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	7.7 mg/L (monthly av. for 1/2011)	31
					4.0 mg/L (daily max.)	7.8 mg/L (daily max. for 1/2011)	
897-0448	KY0106852	11	1st Quarter 2011	Total Recoverable Manganese	4.0 mg/L (daily max.)	6.24 mg/L (daily max. for 3/2011)	1

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DSMRE #	KPDES #	Outfall #	Monitoring Period	Effluent Characteristic	Permit Limits	Reported Discharge	Number of Violations
897-0448	KY0106852	14	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	20.97 mg/L (monthly av. for 2/2011)	28
					4.0 mg/L (daily max.)	20.97 mg/L (daily max. for 2/2011)	
897-0448	KY0106852	14	1st Quarter 2011	pH	6.0 SU (daily min.)	4.5 SU (daily min. for 2/2011)	1
897-0448	KY0106852	1	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.36 mg/L (monthly av. for 3/2011)	31
					4.0 mg/L (daily max.)	4.82 mg/L (daily max. for 3/2011)	
897-0448	KY0106852	1	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	3 mg/L (monthly av. for 1/2011)	31
					4.0 mg/L (daily max.)	10.48 mg/L (daily max. for 1/2011)	
897-0448	KY0106852	3	1st Quarter 2011	Total Recoverable Manganese	4.0 mg/L (daily max.)	6.68 mg/L (daily max. for 1/2011)	1
897-0448	KY0106852	4	1st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	43 mg/L (monthly av. for 2/2011)	28
897-0448	KY0106852	4	1st Quarter 2011	Total Recoverable Manganese	4.0 mg/L (daily max.)	4.65 mg/L (daily max. for 1/2011)	1
897-0455	KYG045377	20	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	19.1 mg/L (monthly av. for 2/2011)	28
					4.0 mg/L (daily max.)	20.92 mg/L (daily max. for 2/2011)	
897-0455	KYG045377	20	1st Quarter 2011	Acidity and Alkalinity	Acidity (mg/L) < Alkalinity (mg/L) (monthly av.)	51 mg/L Acidity, 11 mg/L Alkalinity (monthly av. for 2/2011)	28
					Acidity (mg/L) < Alkalinity (mg/L) (daily max.)	57 mg/L Acidity, 14 mg/L Alkalinity (daily max. for 2/2011)	
897-0455	KYG045377	3	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.14 mg/L (monthly av. for 1/2011)	31
897-0455	KYG045377	3	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.46 mg/L (monthly av. for 3/2011)	31
897-0456	KYG043989	11	1st Quarter 2011	Total Recoverable Manganese	4.0 mg/L (daily max.)	4.01 mg/L (daily max. for 3/2011)	1

DSMRE #	KPDES #	Outfall #	Monitoring Period	Effluent Characteristic	Permit Limits	Reported Discharge	Number of Violations
897-0456	KYG043989	14	1st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	109.5 mg/L (monthly av. for 3/2011)	31
					70 mg/L (daily max.)	210 mg/L (daily max. for 3/2011)	
897-0456	KYG043989	14	1st Quarter 2011	Total Recoverable Iron	4.0 mg/L (daily max.)	7.1 mg/L (daily max. for 3/2011)	1
897-0483	KYG044268	7	1st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	103 mg/L (monthly av. for 2/2011)	28
					70 mg/L (daily max.)	206 mg/L (daily max. for 2/2011)	
897-0483	KYG044268	7	1st Quarter 2011	Total Recoverable Iron	3.5 mg/L (monthly av.)	3.56 mg/L (monthly av. for 2/2011)	28
					4.0 mg/L (daily max.)	7.03 mg/L (daily max. for 2/2011)	
897-0483	KYG044268	1	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.29 mg/L (monthly av. for 3/2011)	31
897-0483	KYG044268	1	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	3.59 mg/L (monthly av. for 1/2011)	31
897-8040	KYG043089	2	1st Quarter 2011	Total Recoverable Iron	3.5 mg/L (monthly av.)	5.9 mg/L (monthly av. for 1/2011)	31
					4.0 mg/L (daily max.)	5.9 mg/L (daily max. for 1/2011)	
Total Number of Self Reported Permit Violations in First Quarter 2011							1,210

III. ICG Knott: Self-Reported Exceedances

DSMRE #	KPDES #	Outfall #	Monitoring Period	Effluent Characteristic	Permit Limits	Reported Discharge	Number of Violations
860-8014	KYG041041	1	1st Quarter 2011	Total Recoverable Manganese	2.0 mg/L (monthly av.)	2.22 mg/L (monthly av. for 3/2011)	31
860-0414	KYG043345	1	1st Quarter 2011	Total Suspended Solids	35.0 mg/l (monthly av.)	35.5 mg/l (monthly av. for 1/2011)	31
860-5267	KYG042589	3	1st Quarter 2011	Total Suspended Solids	35.0 mg/l (monthly av.)	119 mg/l (monthly av. for 1/2011)	31
					70.0 mg/l (daily max.)	228 mg/l (daily max. for 1/2011)	
860-	KYG042589	3	1st Quarter	Total Recoverable	4.0 mg/l	5.1 mg/l (daily	1

5267			2011	Iron	(daily max.)	max. for 1/2011)	
860-5268	KYG042754	4	1st Quarter 2011	Total Suspended Solids	70.0 mg/l (daily max.)	124 mg/l (daily max. for 1/2011)	1
Total Number of Self Reported Permit Violations in First Quarter 2011							95

IV. ICG East Kentucky: Self Reported Exceedances

DSMRE #	KPDES #	Outfall #	Monitoring Period	Effluent Characteristic	Permit Limits	Reported Discharge	Number of Violations
880-0179	KYG046183	6	1 st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	65 mg/L (monthly av. for 1/2011)	31
					70 mg/L (daily max.)	114 mg/L (daily max. for 1/2011)	
880-0179	KYG046183	7	1 st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	140 mg/L (monthly av. for 2/2011)	28
					70 mg/L (daily max.)	452 mg/L (daily max. for 2/2011)	
880-0179	KYG046183	7	1 st Quarter 2011	Total Recoverable Iron	4.0 mg/L (daily max.)	6.08 mg/L (daily max. for 2/2011)	1
898-0735	KYG045173	32	1 st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	38 mg/L (monthly av. for 1/2011)	31
898-0735	KYG045173	46	1 st Quarter 2011	Total Suspended Solids	35 mg/L (monthly av.)	41.5 mg/L (monthly av. for 1/2011)	31
898-0737	KYG045336	1	1 st Quarter 2011	Total Suspended Solids	70 mg/L (daily max.)	98 mg/L (daily max. for 3/2011)	1
Total Number of Self Reported Permit Violations in First Quarter 2011							123

ATTACHMENT 2

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 10-CI-01868
DIVISION D

ENERGY AND ENVIRONMENT CABINET

PLAINTIFF

VS.

COMPLAINT

ICG HAZARD, LLC
ICG KNOTT COUNTY, LLC
ICG EAST KENTUCKY, LLC, and
POWELL MOUNTAIN ENERGY, LLC

DEFENDANTS

COMES THE PLAINTIFF, the Energy and Environment Cabinet (“the Cabinet”), and for its complaint against the above named Defendants states and alleges as follows:

1. The Cabinet is the administrative agency duly charged with the statutory duty to enforce all rules, regulations and orders regarding environmental protection including KRS Chapter 224 and the regulations promulgated thereto, including those relating to the prevention of degradation of the waters of the Commonwealth of Kentucky.

2. ICG Hazard, LLC (“ICG Hazard”), ICG Knott County, LLC (“ICG Knott”), ICG East Kentucky, LLC (“ICG East”), and Powell Mountain Energy, LLC (“Powell Mountain”) are each Delaware corporations in good standing with the Kentucky Secretary of State. ICG Hazard’s principal place of business is in Hazard, Kentucky. ICG Knott’s principal place of business is located in Kite, Kentucky. ICG East’s principal place of business is located in Hatfield, Kentucky. Powell Mountain’s principal place of business is located in St. Charles, Virginia.

3. ICG Hazard, ICG Knott, ICG East, and Powell Mountain have each been issued Kentucky Pollutant Discharge Elimination System (“KPDES”) Permits by the Cabinet’s Division of Water (“DOW”) for the discharge of treated effluent from its surface mining facilities to waters of

the Commonwealth. Each of these companies have also been issued permits from the Kentucky Division of Mine Reclamation and Enforcement (“DMRE”) to conduct their coal mining operations.

ICG HAZARD

4. On or about October 14, 2010, authorized representatives of DOW conducted a Performance Audit Inspection of ICG Hazard’s facility associated with KPDES Permit No. KYG044802. Among the conditions observed were an inadequate chain of custody, a lack of hard copies of analysis results, improper quality control and quality assurance procedures, discrepancies with recorded levels of acidity, and use of inappropriate test procedures.

5. On or about November 29, 2010, DOW issued a Notice of Violation (“NOV”) to ICG Hazard for the violations described in paragraph 4, above citing the following violations:

- a. 401 KAR 5:065 Section 2(1) (citing to 40 C.F.R. 122.41(j)(2)): failure to maintain required records;
- b. 401 KAR 5:065 Section 2(1) (citing to 40 C.F.R. 122.41(e)): improper operation and maintenance;
- c. 401 KAR 5:065 Section 2(1) (citing to 40 C.F.R. 122.41(e)): failure to comply with permit limitations;
- d. 401 KAR 5:065 Section 2(1) (citing to 40 C.F.R. 122.41(j)(4)): failure to properly collect and maintain samples;
- e. 401 KAR 5:065 Section 2(1) (citing to 40 C.F.R. 122.41(j)(4)): failure to monitor permit parameters with approved test procedures; and,
- f. 401 KAR 5:065 Section 2(1) (citing to 40 C.F.R. 122.41(a)): failure to comply with permit conditions.

A copy of the NOV is attached hereto and incorporated herein as Plaintiff’s Exhibit No. 1.

6. On or about October 15, 2010, authorized representatives of the DOW conducted an inspection of the laboratory facilities of Geological Sciences Laboratory (“GSL”). GSL is the

laboratory with which ICG Hazard contracted to perform sample collection and analysis of wastewater discharged by its permitted mining operations, and related tasks. Among the conditions observed were:

a. Failure to maintain required records; failure to establish chain of custody for collected samples; sample bottles are reused and relabeled; the analysis results are entered directly into the computer with no hard copy retained; no quality assurance or quality control procedures were followed; the lab did not have standard operating procedures; tests were performed following the 17th edition of Standard Methods for the Examination of Water and Wastewater; equipment calibration is not documented; no log books are kept.

b. Improper operation and maintenance; adequate laboratory controls and quality assurance procedures are not in place by either ICG Hazard or GSL; no log books are kept verifying proper QA/QC procedures; chain-of-custody and bench sheet forms are not used; neither calibration logs, equipment maintenance logs, reagent logs, nor standard operating procedures are maintained.

c. Failure to comply with permit conditions; failure to collect samples in accordance with the monitoring requirements in the permit; samples are collected in the same plastic bottles each month and not always in the correct volume; samples are not preserved until received at the lab and are not transported in ice from the site to the facility; no written documentation of QA/QC or of calibration procedures or analyses; pH and conductivity field equipment are not approved by EPA.

d. Failure to monitor permit parameters with approved test procedures; samples are collected in the same plastic bottles each month and not always in the correct volume; samples are not preserved until received at the lab and are not transported in ice from the site to the facility; the sample storage refrigerator was also being used to hold food and drinks; no bench

sheets or chain-of-custody documentation to verify that samples were analyzed within the allowed holding times.

7. Based on information and belief, the Cabinet alleges the violations referenced in paragraph 6, above, apply to twenty-seven (27) of ICG Hazard's permitted operations; therefore, on or about November 29, 2010 the Cabinet issued a NOV to 27 of ICG Hazard's permitted facilities served by GSL for the conditions described in paragraph 6, citing the following violations:

- a. 401 KAR 5:065 Section 2(1): failure to maintain required records;
- b. 401 KAR 5:065 Section 2(1): improper operation and maintenance;
- c. 401 KAR 5:065 Section 2(1): failure to comply with permit conditions (two citations thereof; and,
- d. 401 KAR 5:065 Section 2(1): failure to monitor permit limits with approved test procedures.

A copy of each NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No.'s 2 through 28.

8. The DMRE permits and corresponding KPDES permits to which the NOV's referenced in paragraph 7, above, were issued are as follows:

- a. DMRE 813-0272/KPDES KYG046093
- b. DMRE 813-0291/KPDES KYG041123
- c. DMRE 813-0294/KPDES KYG046108
- d. DMRE 813-0296/KPDES KYG043595
- e. DMRE 813-0315/KPDES KYG046206
- f. DMRE 813-0292/KPDES KYG044019
- g. DMRE 813-5025/KPDES KYG044091
- h. DMRE 813-5026/KPDES KYG044753

- i. DMRE 813-7026/KPDES KYG044403
- j. DMRE 813-8018/KPDES KY0023086
- k. DMRE 813-8019/KPDES KYG043598
- l. DMRE 860-0445/KPDES KYG040737
- m. DMRE 866-0281/KPDES KYG043540
- n. DMRE 866-0295/KPDES KYG045542
- o. DMRE 855-5146/KPDES KYG041742
- p. DMRE 897-0446/KPDES KYG046154
- q. DMRE 897-0448/KPDES KY0106852
- r. DMRE 897-0454/KPDES KYG044107
- s. DMRE 897-0455/KPDES KYG045377
- t. DMRE 897-0456/KPDES KYG043989
- u. DMRE 897-0482/KPDES KYG040722
- v. DMRE 897-0483/KPDES KYG044268
- w. DMRE 897-0486/KPDES KYG046274
- x. DMRE 897-0543/KPDES KYG042314
- y. DMRE 897-5118/KPDES KYG044931
- z. DMRE 897-8040/KPDES KYG043089
- aa. DMRE 897-8041/KPDES KYG042693
- bb. DMRE 897-8043/KPDES KYG042598

9. On or about October 15, 2010, authorized representatives of the DOW also conducted an inspection of the laboratory facilities of S & S Water Monitoring (“S & S”). S & S is a second laboratory with which ICG Hazard contracted to collect samples and perform analysis of wastewater discharged by its permitted mining operations and related tasks. Among the conditions observed were:

a. Sample Custody Sheets do not appear to be used consistently, sample tags did not include the name of the sampler or the time the sample was collected; the sample tags are discarded along with the sample bottle after testing is completed; the Sample Custody Sheet does not record information necessary to establish a chain of custody; a "Pond Analysis Lab Sheet," apparently used as a bench sheet, provides some necessary information but does not identify who took the field readings or the name of the analyst(s); does not include the date and time the analysis was performed or any of the documentation (calculations) required to verify the sample results; neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis; no documentation of equipment calibration, maintenance records, the use of duplicates of spikes or other quality control measures.

b. Failure to submit monitoring results at intervals specified in the permit; failure to provide an authorized signature on the Discharge Monitoring Report.

c. Inadequate quality assurance and quality control (QA/QC) procedures; no back-up data to support DMRs; no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab Standard Operating Procedures manual; unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis; DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs as 0 mg/l for 2008 through 2010;

d. No log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives; the refrigerator at the lab did not contain a thermometer, no temperature log for the refrigerator; impossible to determine if samples were being analyzed within the required holding times; unapproved test methodology used to analyze for Total Suspended Solids.

10. Based on information and belief, the violations referenced in paragraph 9, above, apply to each of ICG Hazard's two (2) permitted facilities served by S&S; therefore, on or about November 29, 2010 the Cabinet issued a NOV to ICG Hazard's 2 permitted facilities referenced above for the conditions described in paragraph 9, above, citing the following violations:

- a. 401 KAR 5:065 Section 2(1): failure to maintain required records;
- b. 401 KAR 5:065 Section 2(1): failure to submit monitoring results at required intervals;
- c. 401 KAR 5:065 Section 2(1): improper operation and maintenance; and,
- d. 401 KAR 5:065 Section 2(1): failure to monitor permit limits with approved test procedures.

A copy of each NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No.'s 29 and 30.

11. The DMRE permits and corresponding KPDES permits to which the NOV's referenced in paragraph 10, above, were issued are as follows:

- a. DMRE 860-0454/KPDES KYG046357
- b. DMRE 860-0463/KPDES KYG045985

12. In addition to the above-referenced on-site inspections conducted by DOW, personnel from the Cabinet's Division of Enforcement ("DENF") conducted a review of DMR's submitted by ICG Hazard. This review involved DMR's submitted to the Cabinet between January 1, 2008 and June 30, 2010.

13. On November 29, 2010, DENF issued a NOV to ICG Hazard for violations found as a result of the DMR review. The NOV cited eight (8) violations of KRS 224.70-110, which prohibits the pollution of the waters of the Commonwealth in contravention of any of the rules, regulations, permits, or orders of the Cabinet. The regulation at issue is 401 KAR 5:065 Section 2(1), citing to 40

C.F.R. 122.41(a),(k), and (l)(4)(i). The NOV cites eight (8) regulatory requirements that ICG Hazard failed to meet, regarding thirty-two (32) permitted sites. A copy of the NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No.'s 31 and 31(a).

14. The DMR review conducted by DENF, as referenced in paragraphs 12 and 13 above, revealed the following specific deficiencies:

a. Failure to submit the required monitoring data for conductivity for certain outfalls for the months of August and September 2009 for the following DMRE permits and corresponding KPDES permits:

- i. DMRE 813-0315/KPDES KYG04626: Outfall 007
- ii. DMRE 813-5026/KPDES KYG044753: Outfall 1268
- iii. DMRE 866-0295/KPDES KYG045542: Outfalls BP 2, S1, S2, and S6
- iv. DMRE 897-0446/KPDES KYG046154: Outfalls SS1, SS2, and SS4
- v. DMRE 866-0281/KPDES KYG043540: Outfalls 1246, 1247, 1376, 1400, 1402, 1407, 1801
- vi. DMRE 897-0483/KPDES KYG044268: Outfalls 3, 6, 7, 10, 11, 12

b. Failure to comply with permit limits for the following DMRE permits and corresponding KPDES permits:

- i. DMRE 813-0315/KPDES KYG046206: Total Recoverable Iron at Outfall 107 for January 2010
- ii. DMRE 866-0295/KPDES KYG045542: Total Recoverable Iron at Outfall S2 for March 2008; Total Recoverable Manganese at Outfall S6 for March 2008

c. ICG failed to comply with permit limits for Total Recoverable Iron ("TRFe") and Total Suspended Solids ("TSS") for DMRE Permit No. 897-0483/KPDES Permit No. KYG044268. In June 2010, this site exceeded its limit for Total Recoverable Iron at Outfall 11. In June 2010, this site exceeded its limit for Total Suspended Solids at Outfall 6.

d. Submission of unsigned DMR's for the following DMRE permits and corresponding

KPDES permits:

- i. DMRE 813-0291/KPDES KYG041123: April through June 2010
- ii. DMRE 813-0293/KPDES KYG044802: April through June 2010
- iii. DMRE 813-0315/KPDES KYG046206: April through June 2010
- iv. DMRE 813-5026/KPDES KYG044753: April through June 2010
- v. DMRE 866-0295/KPDES KYG045542: April through June 2010
- vi. DMRE 897-0454/KPDES KYG044107: April through June 2010
- vii. DMRE 897-0448/KPDES KY0106852: April through June 2010
- viii. DMRE 897-0446/KPDES KYG046154: April through June 2010
- ix. DMRE 866-5146/KPDES KYG041742: April through June 2010
- x. DMRE 866-0281/KPDES KYG043540: April through September 2010
- xi. DMRE 860-0445/KPDES KYG040737: April through June 2010
- xii. DMRE 813-8018/KPDES KY0023086: July through September 2010
- xiii. DMRE 897-8041/KPDES KYG042693: April through June 2010
- xiv. DMRE 897-0543/KPDES KYG042314: April through June 2010

e. Failure to submit any DMR's for certain time periods for certain permits and outfalls for the following DMRE permits and corresponding KPDES permits:

- i. DMRE 866-0295/KPDES KYG045542: Outfall 006: January through March 2009.
- ii. DMRE 897-0448/KPDES KY0106852: January through March 2008 and October through December 2008 and 2009.
- iii. DMRE 897-0446/KPDES KYG046154: April through June 2009.
- iv. DMRE 813-0272/KPDES KYG046093: October through December 2009 and January through June 2010.
- v. DMRE 813-0292/KPDES KYG044019: July through September 2009.
- vi. DMRE 813-0294/KPDES KYG046108: January through March 2008,

- July through September 2008, and April through June 2009.
- vii. DMRE 813-0296/KPDES KYG043595: April through June 2010.
 - viii. DMRE 813-5025/KPDES KYG044091: July through September 2008; Outfall BP-1: January through September 2009.
 - ix. DMRE 860-0454/KPDES KYG046357: July through December 2009.
 - x. DMRE 860-0445/KPDES KYG040737: January through March 2009.
 - xi. DMRE 813-8019/KPDES KYG043598: April through September 2009.
 - xii. DMRE 813-8018/KPDES KY0023086: October through December 2008 and January through March 2009.
 - xiii. DMRE 897-0483/KPDES KYG044268: January through June 2008, October through December 2008; Outfall 13: July through December 2009.
 - xiv. DMRE 897-0456/KPDES KYG043989: Outfall 049: April through June 2008 and April through December 2009.
 - xv. DMRE 897-0482/KPDES KYG040722: January through December 2008.
 - xvi. DMRE 897-0486/KPDES KYG046274: January through June 2010.
 - xvii. DMRE 897-5118/KPDES KYG044931: January through December 2008; Outfall BS-1: October through December 2009.
 - xviii. DMRE 897-8041/KPDES KYG042693: January through March 2009.
 - xix. DMRE 897-7012/KPDES KYG042111: January through December 2008, 2009, 2010.
 - xx. DMRE 860-0429/KPDES KYG046437: October through December 2008; January through December 2009; January through June 2010.
 - xxi. DMRE 813-7033/KPDES KYG043740: January through December 2008, 2009, and January through June 2010.
 - xxii. DMRE 866-5137/KPDES KYG044235: January through December 2008, 2009, and January through June 2010.
 - xxiii. DMRE 866-9010/KPDES KYG041819: January through December 2008, 2009, and January through June 2010.
 - xxiv. DMRE 897-7012/KPDES KYG042111: January through December 2008, 2009, and January through June 2010.

f. Unauthorized signature for DMRE Permit No. 860-0463/KPDES Permit KYG045985, on DMR's for Outfalls 101 and 102 for March 2008.

g. Failure to submit all of the required monitoring and reporting data for the following DMRE permits and corresponding KPDES permits:

- i. DMRE 897-0482/KPDES KYG040722: Outfalls Pond 1 and Pond 13: January through September 2009.
- ii. DMRE 897-5118/KPDES KYG044931: Outfall 008: January through September 2009.
- iii. DMRE 813-0292/KPDES KYG044019: January through June 2008, October through December 2008, and January through December 2009.

h. Failure to accurately report data for the following DMRE permits and corresponding KPDES permits:

- i. DMRE 813-0291/KPDES KYG041123: Outfall 1269: January through September 2008 and October through December 2009.
- ii. DMRE 813-0293/KPDES KYG044802: Outfall 1269: January through September 2008 and October through December 2009.
- iii. DMRE 813-0315/KPDES KYG046206: Outfalls 107 & 1268: January through June 2008.
- iv. DMRE 813-5026/KPDES KYG044753: Outfalls 107 & 1268: January through June 2008.

ICG KNOTT

15. On our about October 15, 2010, authorized representatives of the DOW conducted a Performance Audit Inspection of the S&S facilities in relation to its analysis of wastewater discharged by ICG Knott's permitted mining operations associated with KPDES Permit No. KYG045805. Among the conditions observed were:

a. Sample Custody Sheets do not appear to be used consistently, the Sample Custody Sheet does not record information necessary to establish a chain of custody; a "Pond Analysis Lab Sheet," apparently used as a bench sheet, does not include information required to

verify sample results; no identification of method used for analysis; no documentation of equipment calibration, or equipment maintenance records, the use of duplicates of spikes or other quality control measures.

b. Improper operation and maintenance; inadequate Quality Assurance/Quality Control; no "back-up" data to support the information contained on the DMRs; no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, or precipitation logs, no lab Standard Operating Procedures manual; use of an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis; reporting of Acidity concentration for all discharges, from all ponds, for all DMRs as 0 mg/l for 2008, 2009 and 2010; Acidity concentration was initially 8.4 mg/l, however due to a decimal point error, the actual concentration of Acidity was 84 mg/l (DEP's lab analysis determined the acidity to be 22.5 mg/l).

c. Failure to comply with permit conditions; DMRs reviewed from January 2008 to present record all parameters within permit limits; DMRs for the 3rd quarter 2009 do not contain results for conductivity; all DMRs for 2008 through 2010 record acidity sample results as 0 although the lowest detection limit required by the test method is <10 mg/l;. 2nd quarter 2009: bench sheets obtained from S&S Water Monitoring Friday October 15, 2010 do not match the submitted DMR. The DMR results match the 1st quarter DMR results. 1st and 2nd quarter 2010: facility and receiving water fields are left blank; sample collection and analysis not performed in accordance with 40 CFR Part 136; analysis procedures are not followed correctly for all parameters; no documentation of sample collection, transportation, analyses, calibration procedures or quality assurance/quality controls is maintained.

d. Failure to monitor permit parameters utilizing approved test procedures; no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives; no thermometer for lab refrigerator, no temperature log for refrigerator; unable to determine if samples were being analyzed within the required holding times; unapproved test methodology to analyze for Total Suspended Solids.

16. On or about November 29, 2010 the DOW issued a NOV to ICG Knott for the conditions described in paragraph 15, above, citing the following violations:

- a. 401 KAR 5:065 Section 2(1)(citing to 40 C.F.R. 122.41(j)(2)): failure to maintain required records;
- b. 401 KAR 5:065 Section 2(1)(citing to 40 C.F.R. 122.41(e)): improper operation and maintenance;
- c. 401 KAR 5:065 Section 2(1)(citing to 40 C.F.R. 122.41(e)): failure to comply with permit conditions;
- d. 401 KAR 5:065 Section 2(1)(citing to 40 C.F.R. 122.41(j)(4)): failure to monitor permit limits with approved test procedures; and,
- e. 401 KAR 5:065 Section 2(1)(citing to 40 C.F.R. 122.41(j)(4)): failure to comply with permit conditions.

A copy of the NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 32.

17. On or about October 15, 2010, authorized representatives of the DOW also conducted inspections of the S&S facilities in relation to its analysis of wastewater discharged by 7 other mining facilities for which ICG Knott held a permit. Among the conditions observed were:

- a. Sample Custody Sheets do not appear to be used consistently, the Sample Custody Sheet does not record information necessary to establish a chain of custody; a "Pond Analysis Lab Sheet," apparently used as a bench sheet, does not include information required to verify sample results; no identification of method used for analysis; no documentation of equipment calibration, or equipment maintenance records, the use of duplicates of spikes or other quality control measures.
- b. Failure to submit monitoring results at specified intervals and to provide an authorized signature on the DMR's. ICG's contract lab collected and analyzing the samples and

signed the DMR's. No authorized ICG official signed the DMR's nor did ICG duly designate any personnel from S&S to sign the DMR's.

c. Improper operation and maintenance; inadequate Quality Assurance/Quality Control; no "back-up" data to support the information contained on the DMRs; no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, or precipitation logs, no lab Standard Operating Procedures manual; use of an unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis; reporting of Acidity concentration for all discharges, from all ponds, for all DMRs as 0 mg/l for 2008, 2009 and 2010.

d. Failure to monitor permit parameters utilizing approved test procedures; no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives; no thermometer for lab refrigerator, no temperature log for refrigerator; unable to determine if samples were being analyzed within the required holding times; unapproved test methodology to analyze for Total Suspended Solids.

18. Based on information and belief, the Cabinet alleges the violations referenced in paragraph 17, above, apply to each of ICG Knott's other seven (7) permitted operations; therefore, on or about November 29, 2010 the Cabinet issued a NOV to each of ICG Hazard's other 7 permitted facilities served by S&S for the conditions described in paragraph 17, citing the following violations:

- a. 401 KAR 5:065 Section 2(1): failure to maintain required records;
- b. 401 KAR 5:065 Section 2(1): failure to submit monitoring results at required intervals;
- c. 401 KAR 5:065 Section 2(1): improper operation and maintenance; and,
- d. 401 KAR 5:065 Section 2(1): failure to monitor permit limits with approved test procedures.

A copy of each NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No.'s 33 through 39.

19. The DMRE permit numbers and corresponding KPDES permit numbers associated with those sites referenced in paragraphs 17 and 18, above, and to which an NOV was issued are as follows:

- a. DMRE 860-0414/KPDES KYG043345
- b. DMRE 860-5267/KPDES KYG042589
- c. DMRE 860-5268/KPDES KYG042754
- d. DMRE 860-5269/KPDES KYG043631
- e. DMRE 860-5312/KPDES KYG046395
- f. DMRE 860-8012/KPDES KY0094285
- g. DMRE 860-9011/KPDES KYG045000

20. In addition to the above-referenced inspections conducted by DOW, personnel from the Cabinet's Division of Enforcement ("DENF") also performed a review of DMR's submitted by ICG Knott. This review involved DMR submittals to the Cabinet between January 1, 2008 and June 30, 2010.

21. On November 29, 2010, DENF issued a NOV to ICG Knott for violations found as a result of the DMR review. The NOV cited six (6) violations of KRS 224.70-110 which prohibits the pollution of the waters of the Commonwealth in contravention of the rules, regulations, permits, or orders of the Cabinet. The regulation at issue is 401 KAR 5:065 Section 2(1) as in 40 C.F.R. 122.41(a), 40 C.F.R. 122.41 (k), and 40 C.F.R. 122.41 (l)(4)(i). The NOV cites only regulatory requirements that ICG Knott failed to meet regarding fourteen (14) permitted sites. A copy of the NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 40.

22. The DMR review, referenced in paragraphs 20 and 21 above, revealed the following specific deficiencies:

a. Failure to accurately report data on the DMR's. The DMRE permit numbers and KPDES permit numbers associated with this violation are as follows:

- i. DMRE 860-5269/KPDES KYG043631
- ii. DMRE 860-8012/KPDES KY0094285
- iii. DMRE 860-9011/KPDES KYG045000
- iv. DMRE 860-5271/KPDES KYG045805
- v. DMRE 860-5268/KPDES KYG042754
- vi. DMRE 860-5267/KPDES KYG042589
- vii. DMRE 860-0414/KPDES KYG043345

b. Submittal of DMRS with false statements or representations. On two different occasions, S&S submitted copies of the bench sheets for the 1st and 2nd quarters of 2009. The data in the two submittals was different. Despite this violation, the Cabinet has found no evidence of any intent by ICG Knott to defraud or mislead the Cabinet nor any indication that ICG Knott was aware of the two different sets of bench sheets.

c. Failure to submit the required monitoring data for conductivity. The DMRE permit numbers and KPDES permit numbers associated with this violation are as follows:

- i. DMRE 860-5269/KPDES KYG043631
- ii. DMRE 860-5268/KPDES KYG042754
- iii. DMRE 860-5279/KPDES KYG045360

d. Failure to accurately report data on the DMR associated with DMRE 860-8012/KPDES KY0094285. A comparison between the bench sheets and DMR's showed discrepancies with the data for Total Recoverable Manganese.

e. Failure to submit DMR's for the following permits, time periods, and outfalls:

- i. DMRE 860-0441/KPDES KYG045265: Outfall SSB, SSE: April through June June 2009.

- ii. DMRE 860-5296/KPDES KYG044728: Outfall OOE, OOB: October through December 2009.
- iii. DMRE 860-5312/KPDES KYG046395: All outfalls: January through December 2008 and 2009.
- iv. DMRE 860-5324/KPDES KYG046374: All outfalls: January through December 2008 and 2009; January through June 2010.

f. Failure to submit all required monitoring and reporting data. The DMRE permit numbers and KPDES permit numbers associated with this violation are as follows:

- i. DMRE 860-0441/KPDES KYG045265: Outfall 002: January through March 2010.
- ii. DMRE 860-5296/KPDES KYG044728: Outfall 001: December 2009.
- iii. DMRE 860-5297/KPDES KYG044982: Outfall 1: June and October 2008; October, November 2009, and February 2010.
- iv. DMRE 860-8014/KPDES KYG041041: Outfall 030: October 2008.

ICG EAST

23. On or about October 15, 2010, authorized representatives of the DOW conducted an inspection of the S&S facilities in relation to its analysis of wastewater discharged by ICG East's permitted mining operations and related tasks. Among the conditions observed were:

a. Failure to maintain required records; Sample Custody Sheets do not appear to be used consistently, the Sample Custody Sheet does not record information necessary to establish a chain of custody; a "Pond Analysis Lab Sheet," apparently used as a bench sheet, does not include information required to verify sample results; no identification of method used for analysis; no documentation of equipment calibration, or equipment maintenance records, the use of duplicates of spikes or other quality control measures; neither the Pond Analysis Lab Sheets nor lab log books identify the method used for the analysis; no documentation of calibration, maintenance records, the use of duplicates of spikes or other quality control measures.

b. Failure to submit monitoring results at intervals specified in the permit; failure to

provide an authorized signature on the Discharge Monitoring Report.

c. Improper operation and maintenance; lack of adequate quality assurance and quality control (QA/QC) procedures; no back-up data to support information reported in DMRs; no chains of custody, inadequate bench sheets/records, no lab equipment maintenance logs, reagent logs, calibration logs, and no lab SOP manual; unapproved methodology (Hach DR 890 Colorimeter) for TSS analysis; DMRs continually and consistently report the Acidity concentration for all discharges, from all ponds, for all DMRs to be 0 mg/l for 2008 through 2010;

d. Failure to monitor permit parameters utilizing approved test procedures; no log of the preservatives used and/or the Certificates of Analysis that should come with the preservatives; the thermometer for lab refrigerator, no temperature log for lab refrigerator; unable to determine if samples were being analyzed within the required holding times; unapproved test methodology to analyze for Total Suspended Solids.

24. On or about November 29, 2010 the Cabinet issued a NOV to 4 of ICG East's permitted facilities served by S&S for the conditions described in paragraph 23, above, citing the following violations:

- a. 401 KAR 5:065 Section 2(1): failure to maintain required records;
- b. 401 KAR 5:065 Section 2(1): failure to submit monitoring results at required intervals;
- c. 401 KAR 5:065 Section 2(1): improper operation and maintenance; and,
- d. 401 KAR 5:065 Section 2(1): failure to monitor permit limits with approved test procedures.

A copy of each NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No.'s 41 through 44.

25. The DMRE permit numbers and corresponding KPDES permit numbers associated with those sites referenced in paragraphs 23 and 24, above, and to which an NOV was issued are as follows:

- a. DMRE 880-0179/KPDES KYG046183
- b. DMRE 898-0735/KPDES KYG045173
- c. DMRE 898-0737/KPDES KYG045336
- d. DMRE 898-8155/KPDES KYG043050

26. In addition to the above-referenced inspections conducted by DOW, personnel from the Cabinet's Division of Enforcement ("DENF") also performed a review of DMR's submitted by ICG East. This review involved DMR's submitted to the Cabinet between January 1, 2008 and June 30, 2010.

27. On November 29, 2010, DENF issued a NOV to ICG East for violations found as a result of the DMR review. The NOV cited three (3) violations of KRS 224.70-110 which prohibits the pollution of the waters of the Commonwealth in contravention of the rules, regulations, permits, or orders of the Cabinet. The regulation at issue is 401 KAR 5:065 Section 2(1) as in 40 C.F.R. 122.41(a) and 40 C.F.R. 122.41(k). The violations involved three (3) permitted sites. A copy of the NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No.'s 45 and 45(a).

28. The DMR review, referenced in paragraphs 26 and 27 above, revealed the following specific deficiencies:

a. Failure to submit signed DMRs for DMRE Permit No. 880-0179/KPDES Permit KYG046183 for January through March 2010 for outfalls 2H, SS-26, and Pond

b. Failure to submit all of the required monitoring and reporting data. The DMRE permit numbers and KPDES permit numbers associated with this violation are as follows:

- i. DMRE 898-0735/KPDES KYG045173: Outfall 4: December 2009.
- ii. DMRE 880-0179/KPDES KYG046183: Outfall SS2: January 2008.

c. Failure to submit the required monitoring data for conductivity for two DMR's associated with DMRE 898-0737/KPDES KYG045336.

d. Failure to submit any DMR's for DMRE 898-7073/KPDES KYG045176 January through December 2008, 2009, and January through June 2010.

POWELL MOUNTAIN

29. Personnel from the Cabinet's Division of Enforcement ("DENF") also performed a review of DMR's submitted by Powell Mountain. This review involved DMR's submitted to the Cabinet between January 1, 2008 and June 30, 2010.

30. On November 29, 2010, DENF issued a NOV to Powell Mountain for violations found as a result of the DMR review. The NOV cited three (3) violations of KRS 224.70-110 which prohibits the pollution of the waters of the Commonwealth in contravention of of the rules, regulations, permits, or orders of the Cabinet. The regulation at issue is 401 KAR 5:065 Section 2(1) as in 40 C.F.R. 122.41(a). The violations involved five (5) permitted sites. A copy of the NOV is attached hereto and incorporated herein as Plaintiff's Exhibit No. 46.

31. The DMR review, referenced in paragraphs 29 and 30 above, revealed the following specific deficiencies:

a. Failure to submit the required monitoring data for conductivity for certain outfalls for the months of August and September 2009. The DMRE permit numbers and KPDES permit numbers associated with this violation are as follows:

- i. DMRE 848-5475/KPDES KYG045535: Outfall 2
- ii. DMRE 848-5473/KPDES KYG042008: Outfalls 1, 2
- iii. DMRE 848-5471/KPDES KYG041694: Outfalls 5, 6, 7
- iv. DMRE 848-5470/KPDES KYG040167: Outfall 6

b. Failure to submit the required monitoring data for conductivity for certain outfalls for the months of September, October, or November 2009. The DMRE permit numbers and KPDES permit numbers associated with this violation are as follows:

- i. DMRE 848-5471/KPDES KYG041694: Outfall 1: November 2009.
- ii. DMRE 848-5470/KPDES KYG040167: Outfall 3: September and November 2009; Outfall 6: October and November 2009.

c. Failure to submit all of the required monitoring and reporting data. The DMRE permit numbers and KPDES permit numbers associated with this violation are as follows:

- i. DMRE 848-5475/KPDES KYG045535
- ii. DMRE 848-5472/KPDES KYG041488
- iii. DMRE 848-5471/KPDES KYG041694
- iv. DMRE 848-5470/KPDES KYG040167

32. Each issued NOV identifies the remedial measures necessary to correct the cited violations.

33. As set forth above, ICG Hazard, ICG Knott, ICG East, and Powell Mountain violated and continue to violate the Clean Water Act, 33 U.S.C. § 1251 et. seq., KRS 224.70-110, the Cabinet's implementing water quality regulations at 401 KAR Chapter 5, and corresponding provisions of ICG Hazard's, ICG Knott's, ICG East's, and Powell Mountain's KPDES permits set forth herein above. The findings of the Cabinet at specific ICG Hazard, ICG Knott, ICG East, and Powell Mountain operations establish that the same types of violations, including, but not limited to, failure to properly monitor, test, record and report effluent discharges as required by its permits 401 KAR 5:065 Section 2(1), have occurred over the past 5 years at all of ICG Hazard's, ICG Knott's, ICG East's, and Powell Mountain's permitted facilities and corrective action must be taken at all facilities to remedy the ongoing violations.

34. ICG Hazard, ICG Knott, ICG East, and Powell Mountain will continue to violate its KPDES permits and the Cabinet's implementing regulations unless remedial measures are ordered by this Court.

35. ICG Hazard, ICG Knott, ICG East, and Powell Mountain is liable for civil penalties for said violations pursuant to KRS 224.99-010.

36. The Cabinet has authority under KRS 224.10-100 and KRS 224.99-020 to bring an action for recovery of penalties and for injunctive relief for any person in violation of KRS Chapter 224.

WHEREFORE, the Plaintiff respectfully requests that judgment be entered finding Defendants in violation of the statutes and regulations cited in the Notices of Violation and awarding the Cabinet the following relief:

1. That the Defendants be ordered to pay a civil penalty of up to twenty-five thousand dollars (\$25,000) per day per violation for the violations indentified above pursuant to KRS 224.99-010(1);

2. That the Defendants be ordered to comply with all applicable statutes, regulations, and KPDES permit conditions.

3. For any and all further relief to which the Cabinet is entitled.

Respectfully submitted,

ENERGY AND
ENVIRONMENT CABINET

A handwritten signature in cursive script, reading "Josh W. Nacey", is written over a horizontal line.

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