



Commonwealth of Kentucky Energy and Environment Cabinet

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FOR IMMEDIATE RELEASE

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Kentucky Energy and Environment Cabinet files consent judgment against ICG and Frasure Creek Mining companies

FRANKFORT, Ky. – (Dec. 3, 2010) – The Kentucky Energy and Environment Cabinet (EEC) today filed suit in Franklin Circuit Court following Notices of Violation issued to four subsidiaries of ICG, Inc.: ICG Hazard, LLC, ICG Knott County, LLC, ICG East, LLC, and Powell Mountain Energy, LLC; and Frasure Creek Mining, LLC. A consent judgment filed in conjunction with the complaint sets out the terms of agreements reached between the EEC and the companies to resolve the Notices of Violation.

In the agreement, ICG has agreed to pay \$350,000 and Frasure Creek has agreed to pay \$310,000 in civil penalties. In addition to the penalties, the consent judgment sets out remedial measures both companies must take in light of the EEC investigation into the validity and accuracy of numerous discharge monitoring reports from laboratories used by the companies. The terms of settlement contained in the consent judgments are subject to approval by the court.

The allegation that the discharge monitoring reports (DMRs) received by the Department for Natural Resources did not show accurate readings for contaminants in waterways was raised in early October by four environmental groups that announced their intent to file suit against the two companies.

Following receipt of the notices of intent to sue, the Department for Environmental Protection performed Performance Audit Inspections (PAIs) on Oct. 14 and 15, 2010 at three coal mining facilities and the laboratories performing the sampling for the companies. Because a PAI includes oversight of sample collection and analysis, the contract labs used by ICG and Frasure Creek were included in the process.

The PAIs revealed poor record keeping, inadequate quality assurance and quality control, improper procedures, and one facility with water quality impacts. While many of the violations were found at the laboratories, the mining companies are responsible for their shortcomings under state law.

The findings, among other items, include 1,245 violations for ICG at 64 coal mining operations in eight counties and 1,520 violations for Frasure Creek at 39 coal mining operations in six counties.

Specifically, the audit inspections found:

- Failure to maintain required records
- Improper operation and maintenance,
- Failure to comply with effluent limitations contained in the KPDES permit
- Improper sample collection
- Failure to utilize approved test procedures, and
- Failure to comply with the terms of the permit.
- Failure to submit monitoring results with an authorized signature
- Failure to utilize approved test procedures,
- Contributing to pollution of the waters of the Commonwealth
- Degrading the waters of the Commonwealth.

“At the time this matter came to our attention, we made a conscious decision to conduct a full investigation into the allegations raised,” said EEC Secretary Len Peters. “The Departments for Environmental Protection and Natural Resources have spent many hours since that time reviewing lab records and discharge monitoring reports in order to determine whether violations have occurred. The problems outlined are being addressed, and this action today is reflective of our desire to make certain all companies comply with the laws and regulations governing discharge monitoring reports.”

Sec. Peters also noted that the actions taken today go above and beyond the Notices of Intent to sue from the four environmental groups. And he said both companies provided information on additional permits not covered by the NOIs filed in October.

“We have not only looked at the information regarding these two companies, but are also investigating other coal companies and their wastewater lab documents and discharge monitoring reports to determine if those reports and the discharges noted are in compliance with the Clean Water Act,” said Peters.

“Kentucky, like several other states, does not currently have a requirement that wastewater labs be certified,” said Department for Environmental Protection Commissioner Bruce Scott. “Many of the issues discovered in this investigation are the result of the lack of proper oversight of the labs by the coal companies. Consequently, while a permitted wastewater discharger is allowed to contract with a wastewater lab of their choosing, the permit holder is still accountable for the results generated by that lab.”

Secretary Peters noted that the Energy and Environment Cabinet has previously supported legislation to require certification of the wastewater labs and renews its support to increase efforts to protect water quality.

Reviews by the Division of Water (DOW) resulted in the identification of the following violations for which Notices of Violation were issued:

ICG Hazard, LLC

Seven violations of 401 KAR 5:065 Section 2. The nature of the violations includes the following:

- Failure to maintain required records,
- Improper operation and maintenance,
- Failure to comply with effluent limitations contained in the KPDES permit,
- Improper sample collection,

- Failure to utilize approved test procedures, and
- Failure to comply with the terms of the permit.

An additional 27 ICG Hazard permits were cited for five violations of 401 KAR 5:065 Section 2 for laboratory issues. The nature of these violations includes the following:

- Failure to maintain required records,
- Improper operation and maintenance,
- Improper sample collection,
- Failure to utilize approved test procedures, and
- Failure to comply with the terms of the permit.

An additional two ICG Hazard permits were cited for four violations of 401 KAR 5:065 Section 2 for laboratory issues. The nature of these violations includes the following:

- Failure to maintain required records,
- Failure to submit monitoring results with an authorized signature,
- Improper sample collection, and
- Failure to utilize approved test procedures

ICG Knott, LLC

Five violations of 401 KAR 5:065 Section 2. The nature of the violations includes the following:

- Failure to maintain required records,
- Improper operation and maintenance,
- Failure to comply with effluent limitations contained in the KPDES permit,
- Failure to utilize approved test procedures, and
- Failure to comply with the terms of the permit.

An additional seven permits were cited for 401 KAR 5:065 Section 2 violations. The nature of these violations includes:

- Failure to maintain required records,
- Failure to submit monitoring results with an authorized signature,
- Improper sample collection, and
- Failure to utilize approved test procedures.

ICG East, LLC

Four permits were cited 401 KAR 5:065 Section 2 violations. The nature of these violations includes:

- Failure to maintain required records,
- Failure to submit monitoring results with an authorized signature,
- Improper sample collection, and
- Failure to utilize approved test procedures.

Frasure Creek Mining, LLC

Six violations of 401 KAR 5:065 Section 2 and one each of 401 KAR 10:031 Section 2 and KRS 224.70-110.

- Failure to maintain required records,
- Failure to submit monitoring results with an authorized signature,
- Improper operation and maintenance,
- Failure to comply with effluent limitations contained in the KPDES permit,
- Failure to utilize approved test procedures,
- Contributing to pollution of the waters of the Commonwealth,

- Degrading the waters of the Commonwealth, and
- Failure to comply with the terms of the permit.

An additional 37 permits were cited for four 401 KAR 5:065 Section 2 violations. The nature of these violations includes:

- Failure to maintain required records,
- Failure to submit monitoring results with an authorized signature,
- Improper sample collection, and
- Failure to utilize approved test procedures.

Reviews of discharge monitoring reports (DMRs) by the Division of Enforcement (DENF) resulted in the identification of additional violations. Notices of violation were issued for the following exceedances of permits:

Frasure Creek:

- Inaccurate reporting - 92 occurrences
- Missing Conductivity – 84 occurrences
- Missing Signature – 4 occurrences
- Unauthorized Signature – 360 occurrences
- Failure to report data – 13 occurrences
- Missing DMRs – 427 occurrences

ICG Knott Co:

- Inaccurate Reporting – 449 occurrences
- Missing Conductivity – 8 occurrences
- Missing DMRs – 78 occurrences
- Sampling errors – 10 occurrences

ICG Hazard:

- Inaccurate Reporting – 24 occurrences
- Missing Conductivity – 54 occurrences
- Missing Signature – 19 occurrences
- Unauthorized Signature – 2 occurrences
- Missing DMRs – 175 occurrences
- Sampling errors – 48 occurrences
- Numeric violations – 8 occurrences

ICG East Kentucky:

- Missing signatures on DMRs – 3 occurrences
- Missing data on DMRs – 2 occurrences
- Missing conductivity data – 4 occurrences

Powell Mountain Energy, LLC:

- Missing conductivity data – 14 occurrences
- Missing data on DMRs – 53 occurrences

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