

A case study in non-compliance and non-enforcement in KY

One citizen's story about our drinking water

Rick Handshoe – June 2011



My name is Rick Handshoe. I'm a retired radio technician from the Kentucky State Police. I live in Hueysville, Kentucky, along the banks of Raccoon Creek. A number of coal companies have been strip-mining in this community for about 16 years. I live within half a mile of at least nine hollow-fills. There are also two abandoned underground mines nearby.

I love living here. My ancestors have lived here for over two hundred years. It's real quiet. It's the place where I grew up and learned to appreciate our mountains and streams. This community is really close. Everybody here is either family or we grew up and went to school together. We've known each other for generations. Everybody in my community has a garden to supply their food during growing season, plus we do a lot of canning for wintertime. The whole neighborhood does that. We like to hunt and hike and spend a lot of time outdoors.

All of us used to play in the creek years ago. The stream was our playground. We'd catch minnows and crawdads to use as bait when we went fishing. And many families watered their gardens with the creek water. But none of that happens any more, because Raccoon Creek is dead. Nothing can live in this stream. A neighbor recently used the creek water to fill his stocked fishing pond. His statement was that "it boiled the fish alive." He had raised these fish like pets, but it killed a whole lot of them. My neighbors who watered their sweet potatoes with creek water noticed that the plants wilted immediately. We have to wonder what harm the pollution is doing to our health.

My stream has been dead for several years as a result of pollution flowing from a discharge pipe that carries water off a mine site operated by James River Coal Company. The water is supposed to be treated and then it enters a settlement pond where the iron and other pollutants have a chance to drop to the bottom before the water flows downstream.

The coal company that operates the mine frequently shuts down the system that is supposed to treat the water. On those days, the stream runs like orange juice. And it's not just the stream that is poisoned. Raccoon Creek flows into Salt Lick Creek, which flows into Beaver Creek, which flows into the Big Sandy River. Raccoon Creek is upstream of the water intake for Southern Water District, a municipal system that serves my family and more than 6,000 customers in Floyd County, as well as many in Knott County.

Over the past five years I've done everything I know to bring attention to the situation, get the coal company to obey water quality laws, and get state and federal officials to enforce the laws that are meant to protect human health and the environment. I've hosted hundreds of tours of my property, including journalists, church groups, community groups, Congressmen, and top officials from state and federal agencies. Recently I've hosted the Director of the federal Office of Surface Mining, the Director of EPA's Region IV office, and the Director of Kentucky's Department of Mine Reclamation and Enforcement. I've purchased water-testing equipment – the same kind that state inspectors use – and I take weekly tests of conductivity and iron levels. When I call state inspectors to report a problem with the water quality in my stream, I am 110% sure that they will find a violation, because I've already done the tests.

On April 7, 2011, Governor Steve Beshear visited my place as part of a tour hosted by Kentuckians For The Commonwealth. I gave him a first hand look at the situation and talked with him about the serious problems we have with poisoned water and the lack of enforcement of mining laws. He

watched while I tested the water in my stream. It had conductivity levels nearly three times above the federal standard.

The Governor acknowledged the problems with my creek, and then he said, "But you are on city water, aren't you?" I pulled out a quart jar of polluted water from my tap that I had collected just three days earlier. I had to explain: Yes, I'm on city water. But our public drinking water comes from a river that is fed by this creek. And this is just one of many, many polluted headwater streams. They all flow into rivers that provide drinking water for tens of thousands of people who live downstream.



People here drink that water every day. Babies are fed formula that's mixed with this water.

I didn't expect miracles when the Governor came to visit. But I sure didn't expect that the lack of enforcement by state agencies would get worse. But it has. Much worse.

Since March there have been four times when my creek has run orange. One of those times was just before the Governor's visit, but all the others have happened afterwards. On the fourth time, the creek ran orange for five days while state inspectors from the Division of Water and Department of Mine Reclamation and Enforcement refused to even come out to inspect the situation. They still, to this day, have not issued a notice of violation to the coal company for illegal discharge of pollution into the stream that occurred in late May.



I've done everything I know to try to protect the health of my community and get water quality laws enforced. And I've documented every step I've taken along the way. I would like to ask the Governor and the Attorney General of Kentucky, along with state agencies and the US EPA, to review this case study. Somebody needs to tell me what more a citizen has to do to hold coal companies accountable and get mining laws enforced. When state agencies won't respond, where are we supposed to turn?

Below is a brief summary of the steps I've taken to address repeated water quality violations by James River Coal Company, and the lack of response from state and federal agencies that are supposed to enforce our mining and water quality laws.

March 2011: I noticed orange water in the creek.



I called and filed complaint with the Kentucky Division of Mine Reclamation and Enforcement (DMRE). Jeremy Blackburn responded and wrote up a notice of violation for two different water quality standards.

Early April 2011: I noticed orange water again.



I called DMRE and spoke with Matt Dillon. He was in Western KY at the time. He said to call his supervisor. I called Erik Allen. He called me back. He said he was sick and couldn't come out. But he sent Keith Humble. Keith came, visited the creek with me. We did a field test. We went to the pond. He said he had notified the Division of Water that they were discharging polluted water into the creek, and he wrote a second violation.

Mid-May 2011: My neighbor noticed orange water, again.



Two weekends before Memorial Day, a neighbor called and asked if I had looked at the creek. I asked him to call in the complaint while I took samples. I tested for conductivity and tested for iron. He called Matt Dillon with DMRE. Matt told him that he wouldn't come out until Monday. That was on a Saturday. They didn't respond until Monday, when the water was still in violation. That Sunday night I sent a message to Carl Campbell and Jennifer Thompson saying that no one had responded to my complaint in a timely way. The iron was 9 milligrams per liter,

which is just about maximum for the meter. My neighbor also called on Monday morning and filed a complaint with Jennifer Thompson at the Cabinet for Energy and Environment because no response had come from DMRE. Matt came on Monday. Jennifer told my neighbor that she had received my pictures and had sent them to Carl Campbell, the Commissioner of DMRE and Jim Dickinson with Division of Water. She said in the future, if we needed someone to come out and DMRE wouldn't do it, we should call the 1-800 division of water hotline.

Late May 2011: I noticed orange water again. This time two state agencies refused to respond.

On Thursday evening, I went to the garden and the creek was like orange juice. I came straight back to the house, called the Div. of Water hotline and filed a complaint. They said they would have someone out there. I also sent Gwendolyn Keyes Fleming, the Director of EPA region IV pictures. On Friday morning the creek was still running orange. I called the hotline again. I asked what they found when they came out to investigate.

I was told that no one responded and they weren't going to. I was told they would not send out an inspector for orange water.

So I took pictures and offered to send them pictures. I then sent pictures to Gwendolyn Keyes Fleming at the Region IV EPA and let her know that the state told me they weren't going to respond. I also called Matt Dillon at DMRE. He either said he was 6 hours or 600 miles away, I can't remember which. He said to call his supervisor, Erik Allen. I called him and left a message. He never called back. Still hasn't.

I tried to call Greg Weddington, the director of the Prestonsburg office of DMRE, twice on his home number and nobody answered. On Saturday Erik Allen with DMRE still had not called back. I took pictures and sent another message to Gwendolyn Keyes Fleming with EPA Region IV that I had not gotten a call back from Kentucky's DMRE or Division of Water.

Sunday morning I went back down and it was still running orange. I took pictures, called the Division of Water hotline again. I told them that I wanted to file another complaint. I said we had had four days of constant orange water. I asked, "Were they going to respond? I need to know so I can let Gwendolyn Keyes Fleming know." The guy said, "Is that the EPA lady?" I said yes. He said he would send the emergency response team. I sent Gwendolyn Keyes Fleming a message that the Emergency Response Team was supposed to come out.



On Monday I called Matt Dillon with DMRE. He was at the pond. He said they were working to put an aerator in the pond. But they did not issue a violation. I tried to find out who responded from the Division of Water. It should have been a guy named Robert from the Hazard office. But he was gone for the week. When I finally caught up with him, he said he had never gotten the message and had not been assigned to respond. I talked with a Josh George

out of the Hazard Division of Water office. His name was on the form that documented my complaint. He said he had been over to the pond at the same time that Matt Dillon from DMRE was there on Monday. His advice was that they stop the discharge pipe, dip the pond out, treat the water, and then let it enter the pond and the stream again.

But what DMRE chose to do was to let the polluted discharge flow right into the stream.

Josh George told me to call Robert Francis with the Division of Water in Frankfort. He was out. I called again the next day and we spoke. I told him what had happened. He told me that they don't respond to orange water because there is nothing they can do about it. I said, "You are absolutely wrong. You can cite them for violations, and you can make them turn the caustic soda back on to treat the water." He wanted to know what caustic soda does, which really shocked me. And whether they can fix it or not, it's still a violation.

He told me, "We'll respond next time." I said, "But you let this water run into this stream for 5 solid days, 24 hours a day. We are drinking this stuff. Babies are drinking formula. Your department let DMRE bully them around." I agreed that my stream is dead. It's been dead for a couple years now. But this water is supplying drinking water for tens of thousands of people.

I've called Sandra Gruzesky, the director of the Kentucky Division of Water, twice. She did call back once. I've not heard back on my second call.

I've called Mike Haydon's office. He's the Governor's Chief of Staff. I told him that since the governor has been here, things have gotten worse. State agencies won't even respond now. He called me back. I told him the story. He said that by Monday, if I didn't hear back from Division of Water to let him know.

Mike Haydon said James River Coal is supposed to be the most environmentally friendly coal company in the state. I said they've not proven that to me, and no one in state government is responding to my problem. I asked, "So who do I call?"

On Monday I got a message from David Jackson with the Division of Water. I told him the story. He said he had no power to do anything. He was told to call me and see what was going on. He said he would refer it up the ladder. That's the last I've heard.

Later I called Greg Weddington, the manager at Prestonsburg DMRE. He told me next time to call everyone on the emergency list, until finally someone would answer. He said they had dropped the ball.

He explained that they were going to put in an aerator system. I understand that it may not fix the problem. But they are working on it. There is a big difference between doing nothing and working to fix the problem.

Coincidence?

Why did the state DMRE and Division of Water respond three times to complaints about orange water in my stream, but later refused to inspect or issue another notice violation for the same problem? Perhaps that's just a coincidence. We have a lot of those where I live. For example, it's always a coincidence that the coal companies know when a public official is going to visit my place.

But it also seems possible that the state agencies stopped sending their inspectors to respond to my complaints because it could set up what's called a "pattern of violations" in the federal Surface Mining Control and Reclamation Act. If a company has more than three serious violations within a certain period of time, it's considered a pattern, and that can trigger more severe penalties. Of course, the company can always challenge those violations, which allows them to delay or avoid the consequences. But they sure don't want to keep getting additional violations. And it seems possible to me that the state agencies are doing what they can to help by refusing to respond to citizen complaints.

My story is just one citizen's story, but it is cause for alarm for all of us in Kentucky who drink water from the rivers that have their headwaters in the coalfields of eastern Kentucky, including the Cumberland River, Kentucky River, and the Big Sandy River. We all live downstream.

What we want

I am often asked by public officials, “What is it that you people want?” It’s not really that big a mystery. I want our water quality and mining laws to be enforced. I want public agencies and elected leaders to hold coal companies accountable and make them do everything possible to fix the problems they have caused. I want the health of my family and neighbors to be valued more than coal company profits. I want state and federal agencies to stop giving new mining permits in our mountains if they can’t prevent problems like what’s happened to my community. And I want elected officials to get serious about helping to create a different economy in this region, one that doesn’t depend on destroying our land and water.

Those were some of the things that a group of us spoke with Governor Beshear about last February when we did a sit-in in his office. In Appendix I I’ve included a written list of our demands that we shared with the Governor last February and when he visited eastern Kentucky in April. Sadly, we have seen no progress on any of these items, and the problems have only gotten worse.

For all these reasons, on May 17, 2011, I again asked for a meeting with Governor Steve Beshear on behalf of Kentuckians For The Commonwealth. He had already told us in April that he would sit down with us to discuss our concerns in greater detail. And a few weeks after that his chief of staff invited us to submit a request for a meeting that could take place in mid-July. But despite a letter and follow-up calls to his office, we have received no response to our request.

Appendix I – A Summary of Actions members of KFTC are asking Governor Beshear to take to begin an economic transition in eastern Kentucky and protect our land, water and people

Support an economic transition to create good, new jobs for our miners and mountain communities.

- Foster a sincere, public discussion about the opportunity we have to begin an economic transition for coal workers and communities.
- Support significant new investments in job creation in the mountains, especially in the areas of land and forest restoration, energy efficiency, and renewable energy development.
- Vigorously support the Clean Energy Opportunity Act (In 2011 this was HB 239)
- Invest in plans proposed by the city of Lynch and other eastern Kentucky communities to retrofit public buildings, help local residents and businesses save money by saving energy, and develop community-scale renewable energy projects.

Stop the destruction of our land, water and people by fully enforcing existing laws designed to protect our health and communities from destructive mining.

- Direct the Kentucky Energy and Environment Cabinet to withdraw from the lawsuit it joined last October, in which your administration sided with the coal industry against the EPA's efforts to protect our health and water quality.
- Direct the Kentucky Division of Water to stop using a rubber-stamp process (known as the 402 general coal mining permit) which allows companies to pollute our water with minimal restrictions and without public input about site-specific health and environmental impacts.
- Publicly support efforts by city leaders and residents of Lynch, Kentucky to prevent proposed mining that threatens their water supply, cultural heritage, economic development investments, and ecological systems.
- Support proposed federal mine-safety rules that are aimed at eliminating black lung disease and allowing essential enforcement actions to be taken in deep mines that demonstrate a pattern of violations.

Speak honestly and publicly about the real challenges faced by our mountain communities, namely:

- Call for an end to extreme and violent speech aimed at citizens who are working to protect Kentucky's land, air and water.
- Acknowledge that surface mining causes unacceptable and widespread harm to our land, water and people;
- Acknowledge that coal jobs and reserves have entered a period of rapid decline in eastern Kentucky, in large part due to market forces, business trends, and finite resources;
- Make it clear that it is going to take all of us working together to protect our land, water, and health and transition to a new economy and clean energy future.

Appendix II – Letter requesting a follow-up meeting with Governor Steve Beshear**KENTUCKIANS FOR THE COMMONWEALTH***30 Years of Action for Justice*P.O. Box 1450 • London, KY 40743 • 606-878-2161 • www.kftc.org

May 17, 2011

Honorable Governor Steve Beshear
700 Capitol Avenue, Suite 100
Frankfort, Kentucky 40601

Dear Governor Beshear,

It was our pleasure to host you, along with Secretary Len Peters and advisor Eddie Jacobs, during a visit to communities affected by destructive mining practices in eastern Kentucky. Thank you for the opportunity to share our hopes and concerns and to ask for your help.

We were glad that you agreed to Stanley Sturgill's request for follow-up meeting. It is our sincere hope and intention to continue a dialogue with you and members of your administration and to make meaningful progress on a number of long-standing concerns. With this letter, we would like to formally request that a date be scheduled at the soonest possible opportunity for this important conversation. Our contact information is provided at the end of this letter in order to discuss and confirm plans for this meeting.

We suggest that the next meeting take place in Frankfort in order to allow for participation from appropriate representatives of the Energy and Environment Cabinet or other state agencies. We would welcome the opportunity for a detailed discussion with you and members of your administration about our concerns. Below are some of the issues we believe would be beneficial to discuss:

- ⇒ Actions needed to protect the communities of Benham and Lynch from pending surface mining permits that threaten the water and many economic and cultural assets of the community. This could include denying pending permits, approving a Lands Unsuitable for Mining petition or negotiating to purchase additional mineral rights on Black Mountain.
- ⇒ Actions needed to improve the state's enforcement of water quality and surface mining laws and to strengthen Kentucky's cooperation with the US EPA to protect human health and the environment. This could include withdrawing from the state's lawsuit against the EPA, directing the KY Division of Water to stop using 402 general coal mining permit or re-open the 402 general permit for revision, addressing concerns about the need for additional resources for environmental protection and enforcement, and addressing concerns about persistent lack

of enforcement by the Kentucky Division of Water and Kentucky Division of Mine Reclamation and Enforcement.

- ⇒ Actions need to support significant new investments in job creation in the mountains, especially in the areas of land and forest restoration, energy efficiency, and renewable energy development.
- ⇒ Actions needed to foster a sincere, public and civil discussion about many critical challenges facing mountain communities, including the projected decline of coal production and jobs in the region, the widespread harm to health and the environment caused by surface mining, and the need and opportunity to begin an economic transition for coal workers and communities.

Thank you for your continued attention to these important matters. We look forward to hearing from a member of your staff to confirm and develop plans for this meeting.

Sincerely,

Rick Handshoe, Hueysville, KY; 606-358-4912; handshoe@bellsouth.net
Stanley Sturgill, Lynch, KY; 606-848-0997; stanleysturgill@bellsouth.net
Doug Doerrfeld, Elliotville, KY; 606-784-9226; dkadoer@yahoo.com