

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
FILE NO. DOW-33597-047

ENERGY AND ENVIRONMENT CABINET,

PLAINTIFF

and

APPALACHIAN VOICES, INC.
KENTUCKIANS FOR THE COMMONWEALTH, INC.
WATERKEEPER ALLIANCE, INC.
KENTUCKY RIVERKEEPER, INC.

and

PAT BANKS,
in her capacity as Kentucky Riverkeeper

INTERVENING PLAINTIFFS

VS.

FRASURE CREEK MINING, LLC

DEFENDANTS.

AGREED ORDER

WHEREAS, the Parties to this Agreed Order, the Energy and Environment Cabinet (hereinafter "Cabinet") and Frasure Creek Mining, LLC, state:

STATEMENT OF FACTS

1. The Cabinet is an Agency of the Commonwealth charged by statute with the duty to enforce laws for the protection of human health and the environment pursuant to KRS Chapter 224, KRS Chapter 350, and regulations promulgated pursuant thereto.
2. Frasure Creek Mining, LLC (hereinafter "Frasure Creek") is a Kentucky limited liability company in good standing with its principal offices located at 4978 Teays Valley Rd., Scott Depot, WV 25560.
3. Frasure Creek operates surface coal mining operations in Eastern Kentucky pursuant to Surface Disturbance Permits issued by the Cabinet's Department for Natural Resources, Division of Mine Permits ("DMP"). Stormwater and other wastewater discharges

from Frasure Creek's surface coal mining operations are authorized pursuant to Kentucky Pollutant Discharge Elimination System ("KPDES") Permits issued by the Cabinet's Department for Environmental Protection, Division of Water ("DOW"). A listing of the DMP Permits and the corresponding KPDES Permits that have been issued to Frasure Creek that are the subject of this Agreed Order are identified in Appendix A submitted herewith which is incorporated herein as if fully set out in this Agreed Order.

4. On December 3, 2010, the Cabinet and Frasure Creek entered into a Consent Judgment to resolve certain claims asserted by the Cabinet related to KPDES permit violations at Frasure Creek's surface coal mining operations occurring from January, 2008 through date of tendering the Consent Judgment. The Consent Judgment was tendered and a Complaint filed in Franklin Circuit Court, Civil Action No. 10-CI-01867 (hereinafter, "Franklin Circuit Court case") on that same date. Intervening Plaintiffs challenged the Consent Judgment and it has not yet been entered by the Franklin Circuit Court. Frasure Creek submitted a Corrective Action Plan to the Cabinet to implement the remedial measures set forth in the Consent Judgment. Pursuant to the Corrective Action Plan, Frasure Creek began utilizing new wastewater laboratories for monitoring, testing, and DMR reporting under its KPDES permits in January, 2011. Because the Consent Judgment has not yet been entered, the remedies under the Consent Judgment are not yet enforceable by the Franklin Circuit Court.

5. In May, 2011 Frasure Creek reported to the Cabinet that exceedances of its KPDES permit effluent limits were detected at several of its surface coal mining operations and reported on Frasure Creek's Discharge Monitoring Reports ("DMRs"). At that time Frasure Creek met with the Cabinet to discuss additional remedial measures to be undertaken to address

the KPDES permit limit exceedances. The exceedances were not the subject of the Franklin Circuit Court Complaint and Consent Judgment.

6. Beginning on or about May 15, 2011 and concluding on or about December 19, 2011 Cabinet personnel reviewed all DMRs submitted by Frasure Creek for the monitoring periods 1st Quarter 2011 through 3rd Quarter 2011. Through its review the Cabinet identified multiple alleged violations for failure to comply with all permit effluent limits and failure to monitor and report discharges in accordance with permit terms and conditions.

7. On or about June 8, 2011 the Cabinet issued Notices of Violation (hereinafter "NOVs") to Frasure Creek for the violations occurring at its surface mine operations from January, 2011 through March, 2011 (i.e., the 1st Quarter 2011 NOVs).

8. On or about June 28, 2011 the Cabinet was served with a Notice of Intent to Sue pursuant to Section 505(b) of the Clean Water Act, 33 U.S.C. §1365(b), on behalf of several environmental advocacy organizations and individuals (hereinafter collectively "Appalachian Voices" or "Intervenors") alleging violations of KPDES permit effluent limits by Frasure Creek at numerous of Frasure Creek's surface coal mining operations. A copy of the June 28, 2011 Notice of Intent to Sue is attached to this Agreed Order as Appendix B. In the Notice of Intent to Sue, Appalachian Voices alleged that Frasure Creek had committed violations of "an effluent standard or limitation" pursuant to Clean Water Act §§ 505(a)(1)(A) and (f), 33 U.S.C. §§1365(a)(1)(A) and (f). The June 28, 2011 Notice of Intent to Sue indicated that Appalachian Voices would file suit in federal district court pursuant to 33 U.S.C. §1365 within 60 days of the date of the Notice for alleged ongoing violations.

9. On August 26, 2011 the Cabinet filed an Administrative Complaint initiating the present administrative action against Frasure Creek and asserting claims for the violations cited

in the 1st Quarter NOVs issued to Frasure Creek. The NOVs are attached to the Administrative Complaint and incorporated therein. The Administrative Complaint alleges DMR-related violations identified by Appalachian Voices in its June 28, 2011 Notice of Intent to Sue that were substantiated by DENF and were not included in the Franklin Circuit Court case, as well as other, additional KPDES Permit violations independently identified by DENF through its DMR review.

10. On October 3, 2011 Appalachian Voices filed a motion to intervene as a party in this administrative enforcement action. By Order entered November 7, 2011, Appalachian Voices was allowed by the Hearing Officer to intervene in this proceeding.

11. On October 10, 2011 Frasure Creek filed its Answer to the Administrative Complaint denying liability and setting forth various affirmative defenses to the Cabinet's enforcement claims.

12. Regarding DMRE Permit No. 860-0467/KPDES Permit No. KYG040112, the violations of KRS 224.70-110 and 401 KAR 5:005, Section 2(1) related to constructing or discharging without a valid KPDES permit and regarding outfall 139 (pond BB-6) that were cited in NOVs dated June 8, 2011, October 4, 2011 and June 6, 2012 were in error and were rescinded by letters dated February 28, 2012. No further enforcement action will be taken regarding those rescinded violations.

13. On October 25, 2011 Appalachian Voices filed a citizen suit against Frasure Creek pursuant to 33 U.S.C. §1365 in the United States District Court for the Eastern District of Kentucky to pursue the claims set forth in its June 28, 2011 Notice of Intent to Sue, as well as claims that allegedly continued from a Notice of Intent to Sue issued by Appalachian Voices on October 7, 2010 for violations alleged to have occurred from January, 2008 through June, 2010.

Appalachian Voices voluntarily dismissed the citizen suit on October 15, 2012. By Order entered October 15, 2012 the case was dismissed without prejudice.

14. On October 4, 2011 and January 6, 2012 the Cabinet issued additional NOVs to Frasure Creek alleging violations at Frasure Creek's surface mine operations beginning April, 2011 through June, 2011 (2nd Quarter 2011), and July, 2011 through September, 2011 (3rd Quarter 2011), respectively. These violations were identified through the DMR reviews conducted as stated in paragraph 7, above.

15. Beginning in June 2011, Frasure Creek, the Cabinet, and Intervenors have met on numerous occasions in an attempt to settle all claims against Frasure Creek. The Parties were unsuccessful in reaching a global settlement of claims of the Cabinet and Intervenors.

16. Frasure Creek has represented to the Court in the Franklin Circuit Court case that the coal market in Eastern Kentucky has deteriorated since the Cabinet and Frasure Creek entered into the Consent Judgment tendered in that case on December 3, 2010. Frasure Creek has further represented to the Court that its primary coal sale contract has been terminated by the purchaser and Frasure Creek is financially unable to pay a substantial civil penalty given its reclamation obligations, that most of its mining equipment is being liquidated and that it is undergoing a financial restructuring. Frasure Creek has further represented to the Court that it is pursuing an orderly divestiture of its mining operations in Kentucky, and that it is no longer operating any mines in Kentucky. See, Franklin Circuit Court, Civil Action No. 10-CI-01867, Frasure Creek's Status Report to the Court, filed on or about September 17, 2012. Frasure Creek represented to the Court and represents to the Cabinet that it is financially unable to pay the full civil penalty assessed by the Cabinet for the violations that are the subject of this Agreed Order and also successfully reclaim to permanent program standards its Kentucky surface coal mining

permits. Frasure Creek believes that unless circumstances change that would provide for profitable operation of its currently idled Kentucky coal mines, orderly divestiture of its Kentucky mining operations remains the most viable option.

17. In addition to resolving the Cabinet's claims against Frasure Creek as a result of violations alleged herein, and in consideration of Frasure Creek's representations of its inability to pay the assessed civil penalty and also fund reclamation of its permitted sites, it is the goal of the Cabinet by this agreement that Frasure Creek successfully reclaim its permitted coal mining operations in Kentucky and comply with all other statutory and regulatory requirements pending their transfer.

18. On September 28, 2012 Frasure Creek provided DOW with a report of permit limit exceedances as recorded on Frasure Creek's DMRs submitted for the monitoring periods 4th Quarter 2011 through and including 2nd Quarter 2012 ("Exceedance Report"). The Exceedance Report is attached as Exhibit 1 to this Agreed Order and is incorporated as if fully set out herein.

19. Based upon investigations the Cabinet has conducted of laboratories in Kentucky conducting wastewater monitoring and testing services for the coal mining industry, the Cabinet has determined that quality control and quality assurance procedures at some wastewater laboratories are inadequate in part due to a lack of clear regulatory standards and certification programs for wastewater laboratories. Due to these findings, the Cabinet proposed and the Kentucky General Assembly adopted legislation during the 2011 Regular Session to create standards and a certification program for laboratories conducting analyses of wastewater for KPDES program purposes. The legislation was codified at KRS 224.10-670, which became effective June 8, 2011. The Cabinet expects to propose regulations to implement the certification

program in 2013, which will address quality assurance and quality control issues at wastewater laboratories.

20. The Cabinet and Frasure Creek have negotiated the terms of this Agreed Order in good faith and at arms' length. This Agreed Order resolves all of the claims which are asserted or may be asserted by the Cabinet, as follows:

(a) all violations alleged in the Administrative Complaint and the NOV attached as Exhibits 1 through 35 to the Administrative Complaint

(b) all violations alleged in the NOVs issued by the Cabinet to Frasure Creek on October 4, 2011 and January 6, 2012 for the monitoring periods April 2011 through September 2011, which NOVs are attached as Exhibits 2 through 56 to this Agreed Order and are incorporated fully as if set out herein.

(c) all violations identified by Frasure Creek in its Exceedance Report, Exhibit 1 to this Agreed Order, which is incorporated as if fully set out herein.

(d) like violations occurring at the permits listed in Appendix A to this Agreed Order from date of tendering of the Consent Judgment to Franklin Circuit Court on December 3, 2010 to date of entry of this Agreed Order which have not been individually identified.

21. Any claims pending resolution in the 2010 Consent Judgment tendered in the Franklin Circuit Court case are specifically not resolved by this Agreed Order and remain the subject of the enforcement action and pending Consent Judgment in the Franklin Circuit Court case.

22. In order to resolve the Cabinet's claims related to alleged violations and like violations described in paragraph 20(a) – (d), above, Frasure Creek has agreed to pay a civil penalty to the Cabinet, to pay stipulated penalties for certain violations occurring following date

of entry of this Agreed Order, and to submit and implement an amended Corrective Action Plan as more fully described herein.

23. The Parties agree that Frasure Creek's compliance with this Agreed Order will resolve disputed claims, will accommodate orderly transfer of Frasure Creek's permits, and will further the Commonwealth's interest in reclamation of Frasure Creek's Kentucky surface coal mining permits and compliance with all statutory and regulatory requirements governing those permits pending such transfer and that, therefore, this Agreed Order is fair, adequate, reasonable, and in the public interest.

24. Frasure Creek neither admits nor denies the violations alleged in the Administrative Complaint and NOV's described above. Frasure Creek admits the facts stated above but does not admit any liability to the Cabinet arising out of those facts or transactions or occurrences set forth herein, but agrees to the entry of this Agreed Order to resolve the violations alleged. The Parties acknowledge that entry of this Agreed Order will avoid protracted litigation between the Parties.

NOW THEREFORE, based on the foregoing agreed Statement of Facts and representations, and in the interest of settling all civil claims and controversies involving the violations described above, the Parties hereby consent to the entry of this Agreed Order and agree as follows:

REMEDIAL MEASURES

25. Frasure Creek shall review its wastewater treatment, monitoring, testing, recordkeeping, and reporting procedures for its surface coal mining operations and KPDES Permits listed in Appendix A and shall prepare an amended Corrective Action Plan ("CAP"), supplementing the CAP submitted pursuant to the pending Consent Judgment, and shall submit

the amended CAP to the Cabinet for review and approval within thirty (30) days of entry of this Agreed Order. Notwithstanding the Cabinet's review, Frasure Creek shall implement the amended CAP upon submittal for all its surface coal mining operations. The amended CAP shall comprehensively address and identify:

(a) The procedures and protocols, including treatment methods, that Frasure Creek shall implement to achieve compliance with effluent limits established under its KPDES permits, which shall address the treatment chemicals to be used, application processes and rationales, and treatment effectiveness evaluations;

(b) The procedures and protocols that Frasure Creek shall implement to achieve compliance with the monitoring, testing, recordkeeping, and reporting requirements for DMRs under its KPDES Permits;

(c) Practices employed to confirm DMRs contain complete and accurate information for all operations, including operations that share discharge outfalls, and to ensure prompt submittal of corrected DMR information where required under 401 KAR 5:065 Section 2(1), and 40 CFR 122.41(1)(8);

(d) Procedures or processes used to confirm that information provided on future DMRs is consistent with RAM #150 issued by the Cabinet on May 3, 2011, which is attached hereto and incorporated as Appendix C;

(e) A copy of its laboratory's Standard Operating Procedures ("SOP") and Quality Assurance/Quality Control Protocols that are to be used and followed by the laboratory, including copies of the chain of custody form, bench

sheet form, other laboratory forms, summary sheets, and maintenance and calibration log forms that contain all information required by 401 KAR 5:065, and specifically 40 C.F.R. 122.41(e) and (j), as incorporated therein;

(f) Procedures and associated documentation to confirm that its laboratory has developed and is implementing the SOP and is using approved methodologies for all analyses; and

(g) Procedures and documentation to confirm that its laboratory has developed and is implementing appropriate Quality Assurance/Quality Control Protocols.

26. Upon written notification that the Cabinet does not accept the amended CAP, Frasure Creek shall have twenty (20) days to submit a newly amended CAP, which may contain a reasonable compliance schedule for any amended provisions. Upon resubmittal, the Cabinet may, in whole or in part, (1) approve, or (2) disapprove and provide comments to Frasure Creek identifying the deficiencies. Upon such resubmittal, if any part of the amended CAP is disapproved, the Cabinet may deem the Defendant to be out of compliance with this Agreed Order for failure to timely submit such portion and may assess stipulated penalties. If Frasure Creek has received no response from the Cabinet within thirty (30) days of the Cabinet's receipt of the amended CAP or newly amended CAP, such plan shall become effective upon the expiration of that thirty (30) day period.

27. Frasure Creek shall require that its contract laboratory promptly obtain any necessary certifications consistent with administrative regulations to be promulgated by the Cabinet to implement KRS 224.10-670 with respect to wastewater from coal mining operations.

28. Frasure Creek shall not construct, nor discharge from, pond outfalls prior to receipt of an individual KPDES Permit or receipt of a notice that coverage under the General KPDES Permit for coal mining has been issued by DOW for the pond outfall. Notwithstanding any permit terms and conditions, Frasure Creek shall separately notify the DOW when outfalls are to be removed from a KPDES permit and shall submit DMRs for those outfalls consistent with RAM #150 until the KPDES Permit is terminated. Frasure Creek shall maintain sufficient records to confirm the KPDES Permit coverage date, pond/outfall construction date, pond/outfall certification date, and pond/outfall removal date for all ponds/outfalls constructed or removed following execution of this Agreed Order. Such records and documentation may be maintained at Frasure Creek's engineering offices and shall be made available to the Cabinet upon request. The records for each such pond/outfall shall be maintained for three (3) years following KPDES Permit termination.

29. Frasure Creek shall comply with the effluent limitations and effluent monitoring, testing, recordkeeping, and reporting requirements of its KPDES Permits.

30. The Corrective Action Plan and other submittals required of Frasure Creek pursuant to this Agreed Order shall be sent to:

Director, Division of Enforcement
Kentucky Department for Environmental Protection
300 Fair Oaks Lane
Frankfort, Kentucky 40601

31. Except for lab certification under paragraph 27, above, Frasure Creek shall be in compliance with all remedial measures described in this Agreed Order within ninety (90) days of entry of this Agreed Order.

CIVIL PENALTIES/STIPULATED PENALTIES

32. Frasure Creek shall pay the Cabinet a civil penalty in the amount of six hundred sixty thousand dollars (\$660,000) for the violations alleged above as set forth in this Agreed Order. Frasure Creek shall tender to the Cabinet as partial payment of the civil penalty the sum of two hundred twenty thousand (\$220,000) dollars with the return of this signed Agreed Order. Such partial payment shall not be deposited but shall be held by the Cabinet's Office of Administrative Hearings pending execution of the Agreed Order by the Secretary of the Cabinet. If the Secretary does not enter into and sign the Agreed Order, the entire partial payment of \$220,000 shall be returned to Frasure Creek within thirty (30) days of such election by the Secretary.

33. The balance of the civil penalty in the amount of four hundred forty thousand (\$440,000) dollars remaining following the partial payment, above, shall be due and owing one (1) year from date of entry of this Agreed Order; unless at the end of one (1) year from date of entry Frasure Creek makes the following demonstrations to the Cabinet, in writing and accompanied by appropriate documentation:

- (a) that it has transferred ownership of all of its Kentucky surface coal mining permits to a bona fide purchaser or purchasers, in good standing, or that it has used its best efforts to transfer ownership of all of its Kentucky surface coal mining permits, and
- (b) that any such permits of which it retains whole or part ownership are in compliance with reclamation requirements, and

- (c) that its financial status confirms its inability to pay the balance of the civil penalty in light of its obligations to reclaim its surface coal mining permits to permanent program standards.

If the Cabinet finds the above demonstrations have been made, then the entire balance of the civil penalty in the amount of four hundred forty thousand (\$440,000) dollars shall be forgiven and deemed satisfied and no further civil penalty payment shall be due or owing from Frasure Creek to the Commonwealth as a result of violations resolved by this agreement.

34. One hundred eighty days from date of entry of the Agreed Order, if any Frasure Creek surface coal mining permit has not been transferred to a new owner, Frasure Creek shall submit an interim report to the Cabinet on the status of efforts to transfer its mining properties identifying by surface mining permit number and KPDES permit number each permit that has not been so transferred, describing all efforts made to effect transfer, and describing additional efforts planned by Frasure Creek to transfer the permits.

35. Frasure Creek shall transfer its surface mine permits in accordance with all applicable law.

36. Each civil penalty or stipulated penalty payment pursuant to this agreement shall be by cashier's check, certified check, or money order made payable to "Kentucky State Treasurer" and shall be sent to the attention of the Director, Division of Enforcement, Department for Environmental Protection, 300 Fair Oaks Lane, Frankfort, Kentucky 40601. Note on the instrument of payment "Agreed Order, File No. DOW-33597-047".

37. Frasure Creek shall pay stipulated penalties to the Cabinet for failure to comply with this Agreed Order, as set forth below:

(a) For failure to timely submit the amended Corrective Action Plan as set forth in paragraphs 25 and 26, above, a stipulated penalty in the amount of \$1,000 per day may be assessed for each day beyond the applicable thirty (30) day or twenty (20) day deadline.

(b) For each instance in which Frasure Creek constructs a pond outfall prior to securing KPDES Permit coverage for the outfall, a stipulated penalty in the amount of \$1,000 per day may be assessed.

(c) Beginning with the 3rd Quarter 2012 and continuing until termination of this Agreed Order, Frasure Creek shall pay the Cabinet a stipulated penalty of one thousand dollars (\$1,000) for each daily and monthly permit effluent limit violation for pH, manganese, iron, Total Suspended Solids ("TSS"), acidity, alkalinity, or Settleable Solids ("SS");

Stipulated penalties are in addition to, and not in lieu of, any other penalty which could be assessed by the Cabinet. The Cabinet may, in its discretion, waive stipulated penalties that would otherwise be due.

38. Stipulated penalties shall be calculated on a quarterly basis and paid in accordance with the same procedures set forth in Paragraph 36 above, that apply for payment of the civil penalty. After the effective date of this Agreed Order, within thirty (30) days after submitting quarterly DMRs, Frasure Creek shall report the number of violations and calculation of stipulated penalties for the preceding quarter to the Cabinet. If Frasure Creek's calculation of a stipulated penalty is based in part or in whole on application of alternative effluent limits to a wastewater discharge, Frasure Creek shall submit all information necessary

to support a request for alternate effluent limits with its report of number of violations and calculation of stipulated penalties for the quarter.

39. If the Cabinet does not agree with the number of violations or the calculation of stipulated penalties submitted by Frasure Creek it shall provide Frasure Creek with a written explanation of the reason for disagreement within thirty (30) days of receiving Frasure Creek's report. The Cabinet shall make the final determination regarding the number of violations and the calculation of stipulated penalties.

40. A daily violation or monthly average violation as reported on a Frasure Creek DMR shall constitute one (1) violation for purposes of this Section. If a violation occurs at a Pond that is listed on more than one Permit, that shall constitute one (1) violation for purposes of this Section.

41. If Frasure Creek believes the request for payment of a stipulated penalty is erroneous or contrary to law, it may challenge any such determination by filing a petition for hearing pursuant to KRS 224.10-420 in the Office of Administrative Hearings. The filing of a petition for hearing does not automatically excuse timely payment of the stipulated penalty or the continuing accrual of any stipulated penalties unless agreed to by the Cabinet or stayed by the Hearing Officer.

MISCELLANEOUS PROVISIONS

42. This agreed order in no way affects or relieves defendant of its responsibility to comply with all applicable federal, state, and local laws, regulations, and permits.

43. The terms, conditions, and obligations of this agreed order shall survive any reorganization of defendants' corporate structure and shall be fully binding on any entity or organization which is affiliated with defendants.

44. This Agreed Order addresses only the alleged violations described above whether of KPDES or DMP Permits or DOW or DNR regulation. Other than those matters resolved by entry of this Agreed Order, nothing contained herein shall be construed to waive or to limit any remedy or cause of action by the Cabinet based on statutes or regulations under its jurisdiction and Frasure Creek reserves its defenses thereto. The Cabinet expressly reserves its right at any time to issue administrative orders and to take any other action it deems necessary that is not inconsistent with this Agreed Order, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and Frasure Creek reserves its defenses thereto.

45. This Agreed Order shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to Frasure Creek. Frasure Creek reserves its defenses thereto, except that Frasure Creek shall not use this Agreed Order as a defense to any permitting action described in this paragraph.

46. Frasure Creek waives its right to any hearing on the matters resolved herein. However, failure by Frasure Creek to comply strictly with any or all of the terms of this Agreed Order shall be grounds for the Cabinet to seek enforcement of this Agreed Order in Franklin Circuit Court and to pursue any other appropriate administrative or judicial action under KRS Chapter 224, KRS Chapter 350, and the regulations promulgated pursuant thereto, and Frasure Creek reserves its defenses thereto and its right to be heard thereon.

47. This Agreed Order may not be amended except by written order of the Cabinet's Secretary or his designee. Frasure Creek may request an amendment by writing the Director of the Division of Enforcement at 300 Fair Oaks Lane, Frankfort, Kentucky 40601 and stating the reasons for the request. If such request for an amendment(s) is granted, the amended Agreed

Order shall not affect any other provision of this Agreed Order unless expressly provided in the amended Agreed Order.

48. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that Frasure Creek's compliance with this Agreed Order will ensure compliance with all provisions of KRS Chapter 224, KRS Chapter 350, or the regulations promulgated pursuant thereto. Notwithstanding the Cabinet's review and comment on any plans formulated pursuant to this Agreed Order, Frasure Creek shall remain solely responsible for compliance with the terms of KRS Chapter 224, KRS Chapter 350, and the regulations promulgated pursuant thereto, this Agreed Order and any permit and compliance schedule requirements.

49. Frasure Creek shall give notice of this Agreed Order to any purchaser, lessee, or successor in interest prior to the transfer of ownership and/or operation of any part of its now-existing facilities occurring prior to termination of this Agreed Order, shall notify the Cabinet that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or not a transfer takes place, Frasure Creek shall remain fully responsible for payment of all civil penalties and stipulated penalties assessed pursuant to this Agreed Order, for violations occurring prior to permit transfer unless waived by the Cabinet.

50. The Cabinet agrees to allow the performance of the above-listed remedial measures, payment of civil penalties, and transfer of surface coal mining permits by Frasure Creek to satisfy Frasure Creek's obligations to the Cabinet generated by the alleged violations described above.

51. The Cabinet and Frasure Creek agree that the remedial measures agreed to herein are facility-specific and designed to ensure that Frasure Creek complies with the statutes and

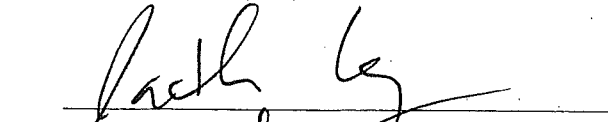
regulations cited herein. This Agreed Order applies specifically and exclusively to Frasure Creek's mining facilities identified in Appendix A and is inapplicable to any other facility.

52. This Agreed Order shall be of no force and effect unless and until it is entered by the Secretary or his designee as evidenced by his signature thereon. If this Agreed Order contains any date by which Frasure Creek is to take any action or cease any activity, and the Secretary enters the Agreed Order after that date, then Frasure Creek is nonetheless obligated to have taken the action or ceased the activity by the date contained in this Agreed Order.

TERMINATION

53. This Agreed Order shall terminate on payment of the civil penalty and completion of transfer of all Frasure Creek permits, but in no event shall the terms of this Agreed Order continue in effect more than twelve (12) months following date of entry unless extended by agreement of the parties in accordance with paragraph 47.

AGREED TO BY:



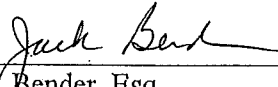
Jonathan Levy

Corporate Secretary

Frasure Creek Mining, LLC

12/20/12
Date

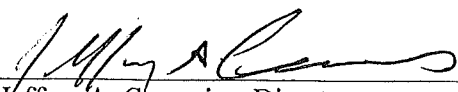
HAVE SEEN:



Jack C. Bender, Esq.
R. Clay Larkin, Esq.
Anne Chesnut, Esq
Bingham Greenebaum Doll LLP
300 West Vine Street
Suite 1100
Lexington, Kentucky 40507

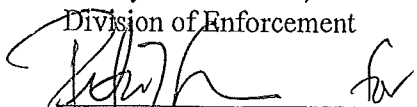
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Date

APPROVAL RECOMMENDED BY:



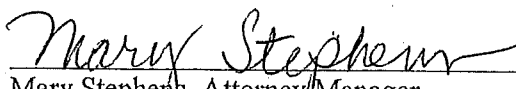
Jeffrey A. Cummins, Director
Division of Enforcement

12/27/2012
Date




Sandra Gruzesky, Director
Kentucky Division of Water

27 Dec. 2012
Date



Mary Stephens, Attorney Manager
Office of General Counsel
Water Legal Section

12-27-12
Date



C. Michael Haines, General Counsel
Energy and Environment Cabinet

1.2.13
Date

HAVE SEEN:

Robert Layton, Chief Hearing Officer
Office of Administrative Hearings

Date

ORDER

Wherefore, the foregoing Agreed Order is entered as the final Order of the Energy and Environment Cabinet this ____ day of _____, 201__.

ENERGY AND ENVIRONMENT CABINET

LEONARD K. PETERS, SECRETARY

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing AGREED ORDER was mailed, postage prepaid to the following on this the ____ day of _____, 2012.

Jack C. Bender, Esq.
Anne A. Chesnut, Esq.
R. Clay Larkin, Esq.
Bingham Greenebaum Doll LLP
300 West Vine Street, Suite 1100
Lexington, KY 40507
COUNSEL FOR DEFENDANTS
FRASURE CREEK MINING, LLC

Hon. Mary V. Cromer
Appalachian Citizens' Law Center
317 Main Street
Whitesburg, KY 41858
COUNSEL FOR PLAINTIFF INTERVENORS
APPALACHIAN VOICES, INC. ET AL.

And mailed, by messenger, to:

Jeffrey A. Cummins, Director
Division of Enforcement
300 Fair Oaks Lane
Frankfort, KY 40601

Mary Stephens, Attorney Manager
Office of General Counsel
Water Legal Section
200 Fair Oaks Lane, First Floor
Frankfort, KY 40601

DOCKET COORDINATOR,
OFFICE OF ADMINISTRATIVE HEARINGS

Distribution: