✎JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SIERRA CLUB, WEST VIRGINIA HIGHLANDS CONSERVANCY, OHIO VALLEY ENVIRONMENTAL COALITION, AND COAL RIVER MOUNTAIN WATCH,

(b) County of Residence of First Listed Plaintiff SAN FRANCISCO, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Derek Teaney (Appalachian Center for the Economy and the Environment, PO Box 507, Lewisburg, WV 24901, 304-793-9007)

DEFENDANTS

ELK RUN COAL COMPANY, INC., INDEPENDENCE COAL COMPANY, INC., MARFORK COAL COMPANY, INC., PEERLESS EAGLE COAL COMPANY, AND POWER MOUNTAIN COAL CO.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury

PERSONAL INJURY
- ❒ 362 Personal Injury - Med. Malpractice
- ❒ 365 Personal Injury - Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 444 Welfare
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 440 Other Civil Rights

PRISONER PETITIONS
- ❒ 510 Motions to Vacate Sentence

Habeas Corpus:
- ❒ 530 General
- ❒ 535 Death Penalty
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition

FORFEITURE/PENALTY
- ❒ 610 Agriculture
- ❒ 620 Other Food & Drug
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 630 Liquor Laws
- ❒ 640 R.R. & Truck
- ❒ 650 Airline Regs.
- ❒ 660 Occupational Safety/Health
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Mgmt. Relations
- ❒ 730 Labor/Mgmt.Reporting & Disclosure Act
- ❒ 740 Railway Labor Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 463 Habeas Corpus - Alien Detainee
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 810 Selective Service
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 875 Customer Challenge 12 USC 3410
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 892 Economic Stabilization Act
- ☒ 893 Environmental Matters
- ❒ 894 Energy Allocation Act
- ❒ 895 Freedom of Information Act
- ❒ 900Appeal of Fee Determination Under Equal Access to Justice
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ❒ 2 Removed from State Court
- ❒ 3 Remanded from Appellate Court
- ❒ 4 Reinstated or Reopened
- ❒ 5 Transferred from another district (specify)
- ❒ 6 Multidistrict Litigation
- ❒ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:

33 USC 1365; 30 USC 1270

Brief description of cause:

Citizen enforcement action under Clean Water Act and Surface Mining Control and Reclamation Act

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ❒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Copenhaver, J. DOCKET NUMBER 2:07-cv-0299

DATE 04/27/2010

SIGNATURE OF ATTORNEY OF RECORD /s/ Derek O. Teaney

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

SIERRA CLUB, WEST VIRGINIA HIGHLANDS CONSERVANCY, OHIO VALLEY ENVIRONMENTAL COALITION, and COAL RIVER MOUNTAIN WATCH,

Plaintiffs,

v. **CIVIL ACTION NO. _____**

ELK RUN COAL COMPANY, INC., INDEPENDENCE COAL COMPANY, INC., MARFORK COAL COMPANY, INC., PEERLESS EAGLE COAL COMPANY, and POWER MOUNTAIN COAL COMPANY,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR CIVIL PENALTIES

INTRODUCTION

1. This is an action for declaratory judgment and mandatory injunctive relief and for civil penalties against Defendants Elk Run Coal Company, Inc., Independence Coal Company, Marfork Coal Company, Inc., Peerless Eagle Coal Company, and Power Mountain Coal Company for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (hereinafter "the Clean Water Act" or "the CWA"), and the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 et seq. (hereinafter "SMCRA").

2. As detailed below, Plaintiffs allege that Defendants discharged and continue to

discharge pollutants, including aluminum, pH, suspended solids, and iron, into waters of the United States in persistent violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and of the conditions and limitations of seven West Virginia/National Pollution Discharge Elimination System ("WV/NPDES") Permits issued to Defendants by the State of West Virginia pursuant to Section 402 of the Clean Water Act.

3. Plaintiffs further allege that Defendants' discharges of unlawful quantities of pollutants, including aluminum, pH, suspended solids, and iron, into the waters adjacent to its minesites violate the performance standards under SMCRA and the terms and conditions of its surface mining permits.

4. Between April 10, 2008, and December 31, 2009, Defendants have accrued at least 3,307 days of violations of the CWA and SMCRA through 255 unlawful discharges at the Outfalls that are the subject of this Complaint.

JURISDICTION AND VENUE

6. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 33 U.S.C. § 1365 (Clean Water Act citizens' suit provision), and 30 U.S.C. § 1270 (SMCRA citizens' suit provision).

7. On January 7, 2010, Plaintiffs gave notice of the violations and its intent to file suit to the Defendants, the United States Environmental Protection Agency ("EPA"), the Office of Surface Mining, Reclamation, and Enforcement ("OSMRE"), and the West Virginia Department of Environmental Protection ("WVDEP"), as required by Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), and Section 520(b)(1)(A) of SMCRA, 30 U.S.C. § 1270(b)(1)A).

8. More than sixty days have passed since notice was served and neither EPA, OSMRE, nor WVDEP has commenced or diligently prosecuted a civil or criminal action to redress the violations. Moreover, neither EPA nor WVDEP commenced an administrative penalty action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or comparable state law to redress the violations prior to the issuance of the January 7, 2010 notice letter.

9. Venue in this District is proper pursuant to 33 U.S.C. § 1365(c)(1) because the sources of the Clean Water Act violations are located in this District, and pursuant to 30 U.S.C. § 1270(c) because the coal mining operations complained of are located in this District.

PARTIES

10. All Defendants named herein are persons within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and Section 701(19) of SMCRA, 30 U.S.C. § 1291(19).

11. Defendant Elk Run Coal Company, Inc ("Elk Run"), is a West Virginia corporation doing business in Sylvester, West Virginia.

12. At all relevant times, Elk Run owned and operated the White Castle Surface Mine, located in Boone County, West Virginia, which is regulated by Surface Mining Permit Number S507586 and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV1003968.

13. Defendant Independence Coal Company, Inc. ("Independence"), is a West Virginia corporation doing business in Madison, West Virginia.

14. At all relevant times, Independence owned and operated the Jacks Branch Buffalo Mine in Boone County, West Virginia, which is regulated by Surface Mining Permit Numbers

U501695 and U501298 and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV1016024.

15. Defendant Marfork Coal Company, Inc. ("Marfork"), is a West Virginia corporation doing business in Whitesville, West Virginia.

16. At all relevant times, Marfork owned and operated the Coon Hollow No. 1 Mine (Surface Mining Permit U500193), the Coon Hollow No. 2 Mine (Surface Mining Permit U500293), the Coon Hollow No. 3 Mine (Surface Mining Permit U500393), the Coon Cedar Grove Deep Mine (Surface Mining Permit U300900), the Slip Ridge No. 2 Gas Deep Mine (Surface Mining Permit U301401), the Beetree Powellton Deep Mine (Surface Mining Permit U301200), the Slip Ridge Powellton Deep Mine (Surface Mining Permit U301399), and the Slip Ridge Cedar Grove Deep Mine (Surface Mining Permit U302100), which are located in Boone and Raleigh Counties, West Virginia, and all of which discharge pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV1013301.

17. At all relevant times, Marfork owned and operated the Low Gap-Lower Cedar Grove Mine No.1, in Raleigh County, West Virginia, which is regulated by Surface Mining Permit U301394 and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV1014838.

18. Defendant Peerless Eagle Coal Company ("Peerless Eagle") is a West Virginia corporation doing business in Leivasy, West Virginia.

19. At all relevant times, Peerless Eagle owned and operated Mine # 15 in Nicholas County, West Virginia, which is regulated by Surface Mining Permit U300489 and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV1002040.

20. At all relevant times, Peerless Eagle owned and operated the Lilly Fork Surface Mine in Nicholas and Clay Counties, West Virginia, which is regulated by Surface Mining Permits S302193 and U302194 and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV1014587.

21. Defendant Power Mountain Coal Company ("Power Mountain") is a West Virginia corporation doing business in Summersville, West Virginia.

22. At all relevant times, Power Mountain owned and operated the Jones Branch Loadout Complex in Nicholas County, West Virginia, which is regulated by Surface Mining Permit O002785 and which discharges pollutants from various outfalls that are subject to the effluent limitations in WV/NPDES Permit WV0091405.

23. Plaintiff The Sierra Club is a nonprofit corporation incorporated in California, with more than 600,000 members nationwide and approximately 1,900 members who reside in West Virginia and belong to its West Virginia Chapter. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass the exploration, enjoyment, and protection of surface waters in West Virginia.

24. Plaintiff West Virginia Highlands Conservancy, Inc., (hereinafter "WVHC") is a nonprofit organization incorporated in West Virginia. It has approximately 2,000 members. It works for the conservation and wise management of West Virginia's natural resources.

25. Plaintiff Ohio Valley Environmental Coalition (hereinafter "OVEC") is a nonprofit organization incorporated in Ohio. Its principal place of business is Huntington, West

Virginia. It has approximately 1,500 members. Its mission is to organize and maintain a diverse grassroots organization dedicated to the improvement and preservation of the environment through education, grassroots organizing, coalition building, leadership development, and media outreach. The Coalition has focused on water quality issues and is a leading source of information about water pollution in West Virginia.

26. Plaintiff Coal River Mountain Watch is a nonprofit membership organization located in southern West Virginia with approximately 500 members, most residing in West Virginia. Its mission is to establish and maintain social, economic, and environmental justice in the southern coalfields of West Virginia, to keep communities intact and to improve the quality of life in these communities. Coal River Mountain Watch is a local leader in environmental and community issues related to the impacts of mountaintop removal coal mining.

27. Plaintiffs' members suffer injuries to their aesthetic, recreational, environmental, and/or economic interests as a result of Defendants' unlawful discharges of pollutants. Plaintiffs' members fish, swim, observe wildlife, and otherwise use the waters affected by Defendants' discharges and are harmed by the high levels of pollutants that Defendants are discharging in violation of their permits. Plaintiffs' members refrain from swimming, wading, fishing, and/or engaging in other activities in and around the streams affected by Defendants' discharges to avoid exposure to pollutants. Plaintiffs' members are also very concerned about the impacts of pollution from Defendants' discharges on their friends and neighbors and on local wildlife. If Defendants' unlawful discharges ceased, the harm to the interests of Plaintiffs' members could be redressed. Injunctions and/or civil penalties would redress Plaintiffs' members' injuries by preventing and/or deterring future violations of the limits in Defendants' permits.

28. At all relevant times, Plaintiffs were and are "persons" as that term is defined by

the CWA, 33 U.S.C. § 1362(5), and SMCRA, 30 U.S.C. § 1291(19).

STATUTORY AND REGULATORY FRAMEWORK

29. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" into waters of the United States except in compliance with the terms of a permit, such as a National Pollution Discharge Elimination System ("NPDES") Permit issued by the EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

30. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the permit issuing authority may issue a NPDES Permit that authorizes the discharge of any pollutant directly into waters of the United States, upon the condition that such discharge will meet all applicable requirements of the CWA and such other conditions as the permitting authority determines necessary to carry out the provisions of the CWA.

31. Section 402 of the CWA, 33 U.S.C. § 1342, directs the Administrator of EPA to prescribe conditions for NPDES permits to ensure compliance with the requirements of the CWA, including conditions on data and information collection, reporting, and other such requirements as the Administrator deems appropriate.

32. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

33. Section 303(a) of the CWA, 33 U.S.C. § 1313(a), requires that states adopt ambient water quality standards and establish water quality criteria for particular water bodies that will protect the designated uses of the water. When technology-based effluent limitations

are insufficient to keep receiving waters within those levels, the permit must include stricter water quality based effluent limits ("WQBELs") that reflect water quality standards and criteria. 33 U.S.C. § 1311(b)(1)(C).

34. At all times relevant to this complaint, the State of West Virginia has been authorized by EPA to administer a NPDES program for regulating the discharges of pollutants into the waters of West Virginia. Permits issued under this program are known as "WV/NPDES" permits.

35. Holders of WV/NPDES Permits are required to monitor their discharges and report their average monthly discharges and maximum daily discharges on a quarterly basis. Those reports are called "Discharge Monitoring Reports," or "DMRs."

36. Section 505(a) of the CWA, 33 U.S.C. § 1365(a), authorizes any "citizen" to "commence a civil action on his own behalf . . . against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this chapter."

37. Section 505(f) of the CWA, 33 U.S.C. § 1365(f), defines an "effluent standard or limitation under this chapter," for purposes of the citizen suit provision in Section 505(a) of the CWA, 33 U.S.C. § 1365(a), to mean, among other things, an unlawful act under Section 301(a), 33 U.S.C. § 1311(a), of the CWA, a WQBEL, and "a permit or condition thereof issued" under Section 402, 33 U.S.C. § 1342, of the CWA.

38. In an action brought under Section 505(a) of the CWA, 33 U.S.C. § 1365(a), the district court has jurisdiction to order the defendant or defendants to comply with the CWA and to assess civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1365(d). See 33 U.S.C. § 1365(a).

39. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who

violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States of up to $25,000 per day for each violation.

40. Pursuant to the Federal Civil Penalties Adjustment Act of 1990, 28 U.S.C § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the court may assess a civil penalty of $32,500 per day for each violation that occurred on or before January 12, 2009, and $37,500 per day for each violation that occurred after January 12, 2009. See 40 C.F.R. § 19.4.

41. Under Section 505(d) of the CWA, 33 U.S.C § 1365(d), the court "may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such an award is appropriate."

42. Section 506 of SMCRA, 30 U.S.C. § 1256, prohibits any person from engaging in or carrying out surface coal mining operations without first obtaining a permit from the Office of Surface Mining Reclamation and Enforcement ("OSMRE") or from an approved state regulatory authority.

43. At all relevant times, the State of West Virginia has administered an approved surface mining regulatory program. See 30 C.F.R. § 948.10.

44. Among the performance standards mandated by SMCRA and the West Virginia Surface Coal Mining and Reclamation Act ("WVSCMRA") is that mining activities must be conducted in such a manner so as to "prevent material damage to the hydrologic balance outside the permit area." 30 C.F.R. §§ 816.41(a) and 817.41(a); 38 C.S.R. § 2-14.5.

45. Another performance standard mandated by SMCRA and the WVSCMRA is that "[d]ischarge from areas disturbed by . . . mining shall not violate effluent limitations or cause a

violation of applicable water quality standards." 30 C.F.R. §§ 816.42 and 817.42; 38 C.S.R. § 2-14.5.b.

46. The legislative rules promulgated under the WVSCMRA provide that, as a general condition of all surface mining permits issued under the WVSCMRA, the permittee must comply with all applicable performance standards. 38 C.S.R. § 2-3.33.c.

47. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), authorizes any person adversely affected to bring an action in federal court to compel compliance with SMCRA against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to [SMCRA]."

48. Section 520(d) of SMCRA, 30 U.S.C. § 1270(d), authorizes the Court to award the costs of litigation, including attorney fees and expert witness fees, "to any party, whenever the court determines such an award is appropriate."

49. WVDEP is the agency in the State of West Virginia that administers that State's CWA and SMCRA programs, and issues WV/NPDES Permits and WVSCMRA Permits.

FACTS

2007 United States Enforcement Action Against Defendants

50. On May 10, 2007, the United States commenced a civil action in this Court to prosecute Massey Energy Company and its subsidiaries—including, but not limited to, the Defendants named in this action—for thousands of violations of the Clean Water Act. United States v. Massey Energy Co., Civ. No. 2:07-cv-0299 (S.D. W. Va.).

51. The federal enforcement action against Massey was resolved through a Consent Decree entered by this Court on April 9, 2008. United States v. Massey Energy Co., Civ. No. 2:07-cv-0299, Docket No. 62 (S.D. W. Va. Apr. 9, 2008).

52. Because the Consent Decree in 2:07-cv-0299 resolved Clean Water Act claims

through the date of lodging only, and because this action prosecutes violations that occurred after the entry of the Consent Decree only, this action is not precluded by res judicata, collateral estoppels, or any other preclusive principle.

WV/NPDES Permit WV1003968

53. At all relevant times, Defendant Elk Run has held WV/NPDES Permit Number WV1003968 to regulate water pollution from its White Castle Surface Mine.

54. At all relevant times, Elk Run has held WVSCMRA Permit Number S507586 for its White Castle Surface Mine.

55. WV/NPDES Permit Number WV1003968 places limits on the concentrations of aluminum and pH that Elk Run can discharge from Outfalls 002, 003, 004, and 017 into Laurel Creek of Coal River. Those waterways are navigable waters of the United States.

56. By the terms of the permit, the final aluminum effluent limitations in WV/NPDES Permit WV1003968 of 0.43 mg/l on a monthly average and 0.75 mg/l on a daily maximum went into effect on April 19, 2007. On or about March 1, 2010, WVDEP purported to relax those effluent limitations to 1.246 mg/l on a monthly average and 2.174 mg/l on a daily maximum through a minor modification. On information and belief, Plaintiffs allege that that minor modification was not subject to public notice and comment and, therefore, was ineffective to relax the aluminum effluent limitations in WV/NPDES Permit WV1003968. See Sierra Club v. Powellton Coal Company, LLC, 2010 WL 454929 (S.D. W. Va. Feb. 3, 2010); Ohio Valley Envtl. Coalition v. Apogee Coal Company, LLC, 555 F. Supp. 2d 640, 645-48 (S.D. W. Va. 2008). Moreover, the attempted relaxation of the aluminum limits suffers from substantive defects, including the violation of the anti-backsliding prohibition in Section 402(o) of the Clean Water Act. PIRG v. New Jersey Expressway Authority, 822 F. Supp. 174, 185 (D.N.J. 1992).

57. The DMRs that Elk Run submitted to WVDEP and the quarterly reports that

Massey Energy submits to EPA under the terms of the Consent Decree in United States v. Massey Energy et al., Civ. No. 2:07-cv-0299 (S.D. W. Va.), reveal numerous violations of the effluent limitations for aluminum and pH on Outfalls 002, 003, 004, and 017 of WV/NPDES Permit Number WV1003968. Those violations are set forth in Appendix A to this Complaint.

58. On the basis of Elk Run's pattern of violations of its effluent limitations in WV/NPDES Permit Number WV1003968 and the absence of any evidence of any meaningful efforts by Elk Run to eradicate the cause of the violations, Plaintiffs allege that Elk Run is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

WV/NPDES Permit Number WV1016024

59. At all relevant times, Defendant Independence has held WV/NPDES Permit Number WV1016024 to regulate water pollution from its Jacks Branch Buffalo Mine.

60. At all relevant times, Independence has held WVSCMRA Permits U501298 and U501695 for its Jacks Branch Buffalo Mine.

61. WV/NPDES Permit Number WV1016024 places limits on the concentrations of aluminum that Independence can discharge into Bias Branch of Spruce Fork of Coal River from Outfall 021. Each of those waterways is a navigable water of the United States.

62. By the terms of the permit, the final aluminum effluent limitations in WV/NPDES Permit WV1016024 of 0.43 mg/l on a monthly average and 0.75 mg/l on a daily maximum went into effect on October 25, 2007. On or about December 14, 2009, WVDEP purported to relax those effluent limitations to 2.939 mg/l on a monthly average and 5.125 daily maximum through a minor modification. On information and belief, Plaintiffs allege that that minor modification was not subject to public notice and comment and, therefore, was ineffective to relax the aluminum effluent limitations in WV/NPDES Permit WV1016024. See Sierra Club v. Powellton Coal Company, LLC, 2010 WL 454929 (S.D. W. Va. Feb. 3, 2010); Ohio Valley

Envtl. Coalition v. Apogee Coal Company, LLC, 555 F. Supp. 2d 640, 645-48 (S.D. W. Va. 2008). Moreover, the attempted relaxation of the aluminum limits suffers from substantive defects, including the violation of the anti-backsliding prohibition in Section 402(o) of the Clean Water Act. PIRG v. New Jersey Expressway Authority, 822 F. Supp. 174, 185 (D.N.J. 1992).

63. The DMRs that Independence submitted to WVDEP and the quarterly reports that Massey Energy submits to EPA under the terms of the Consent Decree in United States v. Massey Energy et al., Civ. No. 2:07-cv-0299 (S.D. W. Va.), reveal numerous violations of the effluent limitations for aluminum on Outfall 021 of WV/NPDES Permit Number WV1016024. Those violations are set forth in Appendix B to this Complaint.

64. On the basis of Independence's pattern of violations of its effluent limitations in WV/NPDES Permit Number WV1016024 and the absence of any evidence of any meaningful efforts by Independence to eradicate the cause of the violations, Plaintiffs allege that Independence is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

WV/NPDES Permit Number WV1013301

65. At all relevant times, Defendant Marfork has held WV/NPDES Permit Number WV1013301 to regulate water pollution from its (1) Coon Hollow No. 1 Mine (Outpost West Deep Mine), (2) Coon Hollow No. 2 Mine (Outpost East Deep Mine), (3) Coon Hollow No. 3 Mine (White Queen Deep Mine), (4) Coon-Cedar Grove Deep Mine, (5) Slip Ridge No. 2 Gas Deep Mine, (6) Beetree Powellton Deep Mine, (7) Slip Ridge Powellton Deep Mine, and (8) Slip Ridge Cedar Grove Mine.

66. At all relevant times, Marfork has held WVSCMRA Permit U500193 for its Coon Hollow No. 1 Mine (Outpost West Deep Mine), WVSCMRA Permit U500293 for its Coon Hollow No. 2 Mine (Outpost East Deep Mine), WVSCMRA Permit U500393 for its Coon Hollow No. 3 Mine (White Queen Deep Mine), WVSCMRA Permit U300900 for its Coon-

Cedar Grove Deep Mine, WVSCMRA Permit U301401 for its Slip Ridge No. 2 Gas Deep Mine, WVSCMRA Permit U301200 for its Beetree Powellton Deep Mine, WVSCMRA Permit U301399 for its Slip Ridge Powellton Deep Mine, and WVSCMRA Permit U302100 for its Slip Ridge Cedar Grove Mine.

67. WV/NPDES Permit Number WV1013301 places limits on the concentrations of aluminum, suspended solids, and iron that Marfork can discharge into Horse Creek of Marsh Fork of Big Coal River of Coal River of Kanawha River from Outfall 034 and Beetree Branch of Little Marsh Fork of Marsh Fork of Big Coal River of Coal River of Kanawha River from Outfall 037. Each of those waterways is a navigable water of the United States.

68. The DMRs that Marfork submitted to WVDEP and the quarterly reports that Massey Energy submits to EPA under the terms of the Consent Decree in United States v. Massey Energy et al., Civ. No. 2:07-cv-0299 (S.D. W. Va.), reveal numerous violations of the effluent limitations for aluminum, suspended solids, and iron on Outfalls 034 and 037 of WV/NPDES Permit Number WV1013301. Those violations are set forth in Appendix C to this Complaint.

69. On the basis of Marfork's pattern of violations of its effluent limitations in WV/NPDES Permit Number WV1013301 and the absence of any evidence of any meaningful efforts by Marfork to eradicate the cause of the violations, Plaintiffs allege that Marfork is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

WV/NPDES Permit Number WV1014838

70. At all relevant times, Defendant Marfork has held WV/NPDES Permit Number WV1014838 to regulate water pollution from its Low Gap-Lower Cedar Grove Mine No. 1.

71. At all relevant times, Marfork has held WVSCMRA Permit U301394 for its Low Gap-Lower Cedar Grove Mine No. 1.

72. WV/NPDES Permit Number WV1014838 places limits on the concentrations of aluminum and suspended solids that Marfork can discharge into Low Gap Branch of Little Marsh Fork of Marsh Fork of Big Coal River of Coal River of Kanawha River from Outfall 002. Each of those waterways is a navigable water of the United States.

73. The DMRs that Marfork submitted to WVDEP and the quarterly reports that Massey Energy submits to EPA under the terms of the Consent Decree in United States v. Massey Energy et al., Civ. No. 2:07-cv-0299 (S.D. W. Va.), reveal numerous violations of the effluent limitations for aluminum and suspended solids on Outfall 002 of WV/NPDES Permit Number WV1014838. Those violations are set forth in Appendix D to this Complaint.

74. On the basis of Marfork's pattern of violations of its effluent limitations in WV/NPDES Permit Number WV1014838 and the absence of any evidence of any meaningful efforts by Marfork to eradicate the cause of the violations, Plaintiffs allege that Marfork is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

WV/NPDES Permit Number WV1002040

75. At all relevant times, Defendant Peerless Eagle has held WV/NPDES Permit Number WV1002040 to regulate water pollution from its Mine # 15.

76. At all relevant times, Peerless Eagle has held WVSCMRA Permit U300489 for its Mine No. 15.

77. WV/NPDES Permit Number WV1002040 places limits on the concentrations of aluminum that Peerless Eagle can discharge into Thrashhouse Run of Robinson Fork of Buffalo Creek of Elk River from Outfall 004. Each of those waterways is a navigable water of the United States.

78. By the terms of the permit, the final aluminum effluent limitations in WV/NPDES Permit WV1002040 of 0.43 mg/l on a monthly average and 0.75 mg/l on a daily maximum went

into effect on January 16, 2007. On or about October 28, 2008, WVDEP purported to relax those effluent limitations to 0.84 mg/l on a monthly average and 1.47 mg/l on a daily maximum through a minor modification. On information and belief, Plaintiffs allege that that minor modification was not subject to public notice and comment and, therefore, was ineffective to relax the aluminum effluent limitations in WV/NPDES Permit WV1002040. See Sierra Club v. Powellton Coal Company, LLC, 2010 WL 454929 (S.D. W. Va. Feb. 3, 2010); Ohio Valley Envtl. Coalition v. Apogee Coal Company, LLC, 555 F. Supp. 2d 640, 645-48 (S.D. W. Va. 2008). Moreover, the attempted relaxation of the aluminum limits suffers from substantive defects, including the violation of the anti-backsliding prohibition in Section 402(o) of the Clean Water Act. PIRG v. New Jersey Expressway Authority, 822 F. Supp. 174, 185 (D.N.J. 1992).

79. The DMRs that Peerless Eagle submitted to WVDEP and the quarterly reports that Massey Energy submits to EPA under the terms of the Consent Decree in United States v. Massey Energy et al., Civ. No. 2:07-cv-0299 (S.D. W. Va.), reveal numerous violations of the effluent limitations for aluminum on Outfall 004 of WV/NPDES Permit Number WV1002040. Those violations are set forth in Appendix E to this Complaint.

80. On the basis of Peerless Eagle's pattern of violations of its effluent limitations in WV/NPDES Permit Number WV1002040 and the absence of any evidence of any meaningful efforts by Peerless Eagle to eradicate the cause of the violations, Plaintiffs allege that Peerless Eagle is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

WV/NPDES Permit Number WV1014587

81. At all relevant times, Defendant Peerless Eagle has held WV/NPDES Permit Number WV1014587 to regulate water pollution from its Lilly Fork Surface Mine.

82. At all relevant times, Peerless Eagle has held WVSCMRA Permits S302193 and U302194 for its Lilly Fork Surface Mine.

83. WV/NPDES Permit Number WV1014587 places limits on the concentrations of aluminum that Peerless Eagle can discharge into Lilly Fork of Buffalo Creek of Elk River from Outfall 013 and Twentymile Creek of Gauley River from Outfall 033. Each of those waterways is a navigable water of the United States.

84. By the terms of the permit, the final aluminum effluent limitations in WV/NPDES Permit WV1014587 of 0.43 mg/l on a monthly average and 0.75 mg/l on a daily maximum went into effect on March 11, 2008. On or about May 11, 2009, WVDEP purported to relax those effluent limitations on Outfall 013 (to 0.90 mg/l on a monthly average and 1.57 mg/l on a daily maximum) and on Outfall 033 (to 0.73 mg/l on a monthly average and 3.27 mg/l on a daily maximum) through a minor modification. On information and belief, Plaintiffs allege that that minor modification was not subject to public notice and comment and, therefore, was ineffective to relax the aluminum effluent limitations in WV/NPDES Permit WV1014587. See Sierra Club v. Powellton Coal Company, LLC, 2010 WL 454929 (S.D. W. Va. Feb. 3, 2010); Ohio Valley Envtl. Coalition v. Apogee Coal Company, LLC, 555 F. Supp. 2d 640, 645-48 (S.D. W. Va. 2008). Moreover, the attempted relaxation of the aluminum limits suffers from substantive defects, including the violation of the anti-backsliding prohibition in Section 402(o) of the Clean Water Act. PIRG v. New Jersey Expressway Authority, 822 F. Supp. 174, 185 (D.N.J. 1992).

85. The DMRs that Peerless Eagle submitted to WVDEP and the quarterly reports that Massey Energy submits to EPA under the terms of the Consent Decree in United States v. Massey Energy et al., Civ. No. 2:07-cv-0299 (S.D. W. Va.), reveal numerous violations of the effluent limitations for aluminum on Outfalls 013 and 033 of WV/NPDES Permit Number WV10014587. Those violations are set forth in Appendix F to this Complaint.

86. On the basis of Peerless Eagle's pattern of violations of its effluent limitations in

WV/NPDES Permit Number WV1014587 and the absence of any evidence of any meaningful efforts by Peerless Eagle to eradicate the cause of the violations, Plaintiffs allege that Peerless Eagle is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

WV/NPDES Permit Number WV0091405

87. At all relevant times, Defendant Power Mountain has held WV/NPDES Permit Number WV0091405 to regulate water pollution from its Jones Branch Loadout Complex.

88. At all relevant times, Power Mountain has held WVSCMRA Permit O002785 for its Jones Branch Loadout Complex.

89. WV/NPDES Permit Number WV0091405 places limits on the concentrations of aluminum that Power Mountain can discharge into Jones Branch of Peters Creek of Gauley River from Outfall 001 and into an unnamed tributary of Jones Branch of Peters Creek of Gauley River from Outfall 005. Each of those waterways is a navigable water of the United States.

90. The aluminum effluent limitations on Outfalls 001 and 005 of WV/NPDES Permit WV0091405 are 0.08 mg/l on a monthly average and 0.14 on a daily maximum. Those limits became effective on February 23, 2008.

91. On or about November 2, 2009, WVDEP purported to modify WV/NPDES Permit WV0091405 through a minor modification, ostensibly for the purposes of closing Outfall 006 and to reroute drainage from the minesite. That minor modification also purported to relax the aluminum effluent limitations on Outfall 001. On information and belief, Plaintiffs allege that the November 2, 2009 minor modification was not subject to public notice and comment and, therefore, was ineffective to relax the aluminum effluent limitations in WV/NPDES Permit WV0091405. See Sierra Club v. Powellton Coal Company, LLC, 2010 WL 454929 (S.D. W. Va. Feb. 3, 2010); Ohio Valley Envtl. Coalition v. Apogee Coal Company, LLC, 555 F. Supp. 2d 640, 645-48 (S.D. W. Va. 2008). Moreover, the attempted relaxation of the aluminum limits

suffers from substantive defects, including the violation of the anti-backsliding prohibition in Section 402(o) of the Clean Water Act. PIRG v. New Jersey Expressway Authority, 822 F. Supp. 174, 185 (D.N.J. 1992).

92. The DMRs that Power Mountain submitted to WVDEP and the quarterly reports that Massey Energy submits to EPA under the terms of the Consent Decree in United States v. Massey Energy et al., Civ. No. 2:07-cv-0299 (S.D. W. Va.), reveal numerous violations of the effluent limitations for aluminum on Outfalls 001 and 005 of WV/NPDES Permit Number WV0091405. Those violations are set forth in Appendix G to this Complaint.

93. On the basis of Power Mountain's pattern of violations of its effluent limitations in WV/NPDES Permit Number WV0091405 and the absence of any evidence of any meaningful efforts by Power Mountain to eradicate the cause of the violations, Plaintiffs allege that Power Mountain is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

Plaintiffs' 60-Day Notice Letter

94. Plaintiffs sent a notice of intent letter (hereinafter, "NOI"), postmarked on January 7, 2010, to Defendants notifying them that their discharges of suspended solids, iron, aluminum, and pH and violations of the effluent limitations in their various WV/NPDES Permits violate the Clean Water Act and SMCRA.

95. The NOI also notified Defendants of Plaintiffs' intent to sue Defendants for those violations at the end of the 60-day period required by statute.

96. The NOI was sent by certified mail, return receipt requested, to (among others) the following persons: S. Craig Boggs, President of Elk Run Coal Company, Inc.; Billy R. McCoy, President of Independence Coal Company; Christopher L. Blanchard, President of Marfork Coal Company, Inc.; David C. Hughart, President of Peerless Eagle Coal Company; Michael Calloway, President of Power Mountain Coal Company; Secretary Randy Huffman, WVDEP;

William Early, then-Acting Regional Administrator of EPA Region III; Lisa P. Jackson, Adminstrator of EPA; Ken Salazar, Secretary of the United States Department of Interior; Joseph Pizarchik, Director of the Office of Surface Mining Reclamation and Enforcement; and Massey Energy Services Legal Department, Registered Agent for Defendants. The NOI was also sent to the Regional Director for the Appalachian Region of the Office of Surface Mining Enforcement and Reclamation via first class mail, postage prepaid.

97. Plaintiffs received return receipt cards from the certified mail recipients of the NOI indicating that all of them had received Plaintiffs' NOI by January 21, 2010.

FIRST CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit Number WV1003968)

98. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

99. Elk Run's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

100. The aluminum and pH limits in WV/NPDES Permit Number WV1003698 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

101. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1003968 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

102. A violation of an average monthly effluent limitation in a permit is considered to

be a violation on each and every day of that month.

103. As of December 31, 2009, Elk Run had accrued at least 744 days of violation of the aluminum and pH effluent limitations in WV/NPDES Permit Number WV1003968.

104. Unless enjoined, Elk Run will remain in continuing violation of the Clean Water Act.

105. On information and belief, Plaintiffs allege that Elk Run is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1003968 because Elk Run has taken no meaningful action to eradicate the underlying cause of the violations.

106. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Elk Run is liable for civil penalties of up to $32,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1003968 that occurred on or before January 12, 2009, and $37,500 per day for violations that occurred thereafter.

SECOND CLAIM FOR RELIEF

(SMCRA Violations Related to WV/NPDES Permit Number WV1003968)

107. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

108. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."

109. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

110. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

111. WV/NPDES Permit Number WV1003968 regulates Elk Run's discharges from its White Castle Surface Mine (WVSCMRA Permit No. S507586).

112. As described above, Elk Run has been in violation of its effluent limitations in WV/NPDES Permit Number WV1003968 on at least 744 days.

113. Consequently, Elk Run has committed hundreds of violations of the performance standards incorporated in the regulations under SMCRA.

114. Because those performance standards are permit conditions, Elk Run is also in violation of the terms and conditions of WVSCMRA Permit Number S507586.

115. Unless enjoined, Elk Run will remain in ongoing and continuing violation of SMCRA.

116. On information and belief, Plaintiffs allege that Elk Run is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1003968 because Elk Run has taken no meaningful action to eradicate the underlying cause of the violations.

THIRD CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit Number WV1016024)

117. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

118. Independence's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

119. The aluminum limits in WV/NPDES Permit Number WV1016024 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

120. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1016024 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

121. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

122. As of December 31, 2009, Independence had accumulated at least 346 days of violation of the aluminum effluent limitations in WV/NPDES Permit Number WV1016024.

123. Unless enjoined, Independence will remain in continuing violation of the Clean Water Act.

124. On information and belief, Plaintiffs allege that Independence is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1016024 because Independence has taken no meaningful action to eradicate the underlying cause of the violations.

125. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Independence is liable for civil penalties of up to $32,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1016024 that occurred on or before January 12, 2009, and $37,500 per day for violations that occurred thereafter.

FOURTH CLAIM FOR RELIEF

(SMCRA Violations Related to WV/NPDES Permit Number WV1016024)

126. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

127. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."

128. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

129. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

130. WV/NPDES Permit Number WV1016024 regulates Independence's discharges from its Jacks Branch Buffalo Mine (WVSCMRA Permit Nos. U501298 and U501695).

131. As described above, Independence has been in violation of its effluent limitations in WV/NPDES Permit Number WV1016024 on at least 346 days.

132. Consequently, Independence has committed hundreds of violations of the performance standards incorporated in the regulations under SMCRA.

133. Because those performance standards are permit conditions, Independence is also in violation of the terms and conditions of WVSCMRA Permits U501298 and U501695.

134. Unless enjoined, Independence will remain in ongoing and continuing violation of SMCRA.

135. On information and belief, Plaintiffs allege that Independence is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1016024 because Independence has taken no meaningful action to eradicate the underlying cause of the violations.

FIFTH CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit Number WV1013301)

136. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

137. Marfork's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

138. The suspended solids, aluminum, and iron limits in WV/NPDES Permit Number WV1013301 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

139. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1013301 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

140. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

141. As of December 31, 2009, Marfork had accumulated at least 642 days of violation of the suspended solids, aluminum effluent, iron and pH limitations in WV/NPDES Permit Number WV1013301.

142. Unless enjoined, Marfork will remain in continuing violation of the Clean Water Act.

143. On information and belief, Plaintiffs allege that Marfork is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent

limitations in WV/NPDES Permit Number WV1013301 because Marfork has taken no meaningful action to eradicate the underlying cause of the violations.

144. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Marfork is liable for civil penalties of up to $32,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1013301 that occurred on or before January 12, 2009, and $37,500 per day for violations that occurred thereafter.

SIXTH CLAIM FOR RELIEF
(SMCRA Violations Related to WV/NPDES Permit Number WV1013301)

145. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

146. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."

147. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

148. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

149. WV/NPDES Permit Number WV1013301 regulates Marfork's discharges from its Coon Hollow No. 1 Mine (WVSCMRA Permit No. U500193), Coon Hollow No. 2 Mine (WVSCMRA No. U500293), Coon Hollow No. 3 Mine (WVSCMRA No. U500393), Coon-Cedar Grove Deep Mine (WVSCMRA No. U300900), Slip Ridge No. 2 Gas Deep Mine (WVSCMRA No. U301401), Beetree Powellton Deep Mine (WVSCMRA No. U301200), Slip

Ridge Powellton Deep Mine (WVSCMRA No. U301399), and Slip Ridge Cedar Grove Mine (WVSCMRA Permit No. U302100).

150. As described above, Marfork has been in violation of its effluent limitations in WV/NPDES Permit Number WV1013301 on at least 642 days.

151. Consequently, Marfork has committed hundreds of violations of the performance standards incorporated in the regulations under SMCRA.

152. Because those performance standards are permit conditions, Marfork is also in violation of the terms and conditions of WVSCMRA Permit Numbers U500193, U5001293, U500393, U300900, U301401, U301200, U301399, and U302100.

153. Unless enjoined, Marfork will remain in ongoing and continuing violation of SMCRA.

154. On information and belief, Plaintiffs allege that Marfork is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1013301 because Marfork has taken no meaningful action to eradicate the underlying cause of the violations.

SEVENTH CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit Number WV1014838)

155. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

156. Marfork's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

157. The suspended solids and aluminum limits in WV/NPDES Permit Number

WV1014838 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

158. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1014838 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

159. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

160. As of December 31, 2009, Marfork had accumulated at least 253 days of violation of the suspended solids and aluminum effluent limitations in WV/NPDES Permit Number WV1014838.

161. Unless enjoined, Marfork will remain in continuing violation of the Clean Water Act.

162. On information and belief, Plaintiffs allege that Marfork is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1014838 because Marfork has taken no meaningful action to eradicate the underlying cause of the violations.

163. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Marfork is liable for civil penalties of up to $32,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1014838 that occurred on or before January 12, 2009, and $37,500 per day for violations that occurred thereafter.

EIGHTH CLAIM FOR RELIEF

(SMCRA Violations Related to WV/NPDES Permit Number WV1014838)

164. Plaintiffs incorporate by reference all allegations contained in paragraphs 1

through 97 supra.

165. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."

166. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

167. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

168. WV/NPDES Permit Number WV1014838 regulates Marfork's discharges from its Low Gap-Lower Cedar Grove Mine No. 1 (WVSCMRA Permit No. U301394).

169. As described above, Marfork has been in violation of its effluent limitations in WV/NPDES Permit Number WV1014838 on at least 253 days.

170. Consequently, Marfork has committed hundreds of violations of the performance standards incorporated in the regulations under SMCRA.

171. Because those performance standards are permit conditions, Marfork is also in violation of the terms and conditions of WVSCMRA Permit Number U301394.

172. Unless enjoined, Marfork will remain in ongoing and continuing violation of SMCRA.

173. On information and belief, Plaintiffs allege that Marfork is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1014838 because Marfork has taken no meaningful action to

eradicate the underlying cause of the violations.

NINTH CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit Number WV1002040)

174. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

175. Peerless Eagle's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

176. The aluminum limits in WV/NPDES Permit Number WV1002040 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

177. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1002040 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

178. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

179. As of December 31, 2009, Peerless Eagle had accumulated at least 472 days of violation of the aluminum effluent limitations in WV/NPDES Permit Number WV1002040.

180. Unless enjoined, Peerless Eagle will remain in continuing violation of the Clean Water Act.

181. On information and belief, Plaintiffs allege that Peerless Eagle is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1002040 because Peerless Eagle has taken no

meaningful action to eradicate the underlying cause of the violations.

182. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Peerless Eagle is liable for civil penalties of up to $32,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1002040 that occurred on or before January 12, 2009, and $37,500 per day for violations that occurred thereafter.

TENTH CLAIM FOR RELIEF
(SMCRA Violations Related to WV/NPDES Permit Number WV1002040)

183. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

184. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."

185. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

186. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

187. WV/NPDES Permit Number WV1002040 regulates Peerless Eagle's discharges from its Mine # 15 (WVSCMRA Permit No. U300489).

188. As described above, Peerless Eagle has been in violation of its effluent limitations in WV/NPDES Permit Number WV1002040 on at least 472 days.

189. Consequently, Peerless Eagle has committed hundreds of violations of the performance standards incorporated in the regulations under SMCRA.

190. Because those performance standards are permit conditions, Peerless Eagle is also in violation of the terms and conditions of WVSCMRA Permit Number U300489.

191. Unless enjoined, Peerless Eagle will remain in ongoing and continuing violation of SMCRA.

192. On information and belief, Plaintiffs allege that Peerless Eagle is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1002040 because Peerless Eagle has taken no meaningful action to eradicate the underlying cause of the violations.

ELEVENTH CLAIM FOR RELIEF

(Clean Water Act Violations of WV/NPDES Permit Number WV1014587)

193. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

194. Peerless Eagle's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

195. The aluminum limits in WV/NPDES Permit Number WV1014587 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

196. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1014587 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

197. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

198. As of December 31, 2009, Peerless Eagle had accumulated at least 343 days of violation of the aluminum effluent limitations in WV/NPDES Permit Number WV1014587.

199. Unless enjoined, Peerless Eagle will remain in continuing violation of the Clean Water Act.

200. On information and belief, Plaintiffs allege that Peerless Eagle is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1014587 because Peerless Eagle has taken no meaningful action to eradicate the underlying cause of the violations.

201. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Peerless Eagle is liable for civil penalties of up to $32,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1014587 that occurred on or before January 12, 2009, and $37,500 per day for violations that occurred thereafter.

TWELFTH CLAIM FOR RELIEF

(SMCRA Violations Related to WV/NPDES Permit Number WV1014587)

202. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

203. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."

204. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

205. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as

conditions in permits issued under the State Act.

206. WV/NPDES Permit Number WV1014587 regulates Peerless Eagle's discharges from its Lily Fork Surface Mine (WVSCMRA Permit Nos. S302193 and U302194).

207. As described above, Peerless Eagle has been in violation of its effluent limitations in WV/NPDES Permit Number WV1014587 on at least 343 days.

208. Consequently, Peerless Eagle has committed hundreds of violations of the performance standards incorporated in the regulations under SMCRA.

209. Because those performance standards are permit conditions, Peerless Eagle is also in violation of the terms and conditions of WVSCMRA Permit Numbers S302193 and U302194.

210. Unless enjoined, Peerless Eagle will remain in ongoing and continuing violation of SMCRA.

211. On information and belief, Plaintiffs allege that Peerless Eagle is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1014587 because Peerless Eagle has taken no meaningful action to eradicate the underlying cause of the violations.

THIRTEENTH CLAIM FOR RELIEF
(Clean Water Act Violations of WV/NPDES Permit Number WV0091405)

212. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

213. Power Mountain's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

214. The aluminum limits in WV/NPDES Permit Number WV0091405 are "effluent

standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

215. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV0091405 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

216. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

217. As of December 31, 2009, Power Mountain had accumulated at least 507 days of violation of the aluminum and suspended solids effluent limitations in WV/NPDES Permit Number WV0091405.

218. Unless enjoined, Power Mountain will remain in continuing violation of the Clean Water Act.

219. On information and belief, Plaintiffs allege that Power Mountain is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0091405 because Power Mountain has taken no meaningful action to eradicate the underlying cause of the violations.

220. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Power Mountain is liable for civil penalties of up to $32,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV0091405 that occurred on or before January 12, 2009, and $37,500 per day for violations that occurred thereafter.

FOURTEENTH CLAIM FOR RELIEF
(SMCRA Violations Related to WV/NPDES Permit Number WV0091405)

221. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 97 supra.

222. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."

223. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

224. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

225. WV/NPDES Permit Number WV0091405 regulates Power Mountain's discharges from its Jones Branch Loadout Complex (WVSCMRA Permit No. O002785).

226. As described above, Power Mountain has been in violation of its effluent limitations in WV/NPDES Permit Number WV0091405 on at least 507 days.

227. Consequently, Power Mountain has committed hundreds of violations of the performance standards incorporated in the regulations under SMCRA.

228. Because those performance standards are permit conditions, Power Mountain is also in violation of the terms and conditions of WVSCMRA Permit Number O002785.

229. Unless enjoined, Power Mountain will remain in ongoing and continuing violation of SMCRA.

230. On information and belief, Plaintiffs allege that Power Mountain is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0091405 because Power Mountain has taken no meaningful action to eradicate the underlying cause of the violations.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this court enter an Order:

(1). Declaring that Defendants have violated and are in continuing violation of the Clean Water Act and SMCRA;

(2). Enjoining Defendants from operating their facilities in such a manner as will result in further violations of the effluent limitations in WV/NPDES Permit Numbers WV1003968, WV1016024, WV1013301, WV1014838, WV1002040, WV1014587, and WV0091405;

(3). Ordering Defendants to immediately comply with all effluent limitations, monitoring and reporting requirements, and other terms and conditions of WV/NPDES Permit Numbers WV1003968, WV1016024, WV1013301, WV1014838, WV1002040, WV1014587, and WV0091405;

(4). Ordering Defendants to immediately comply with the terms and conditions of WVSCMRA Permit Numbers S507586, U501695, U501298, U500193, U500293, U500393, U300900, U301401, U301200, 301399, U302100, U301394, U300489, S302193, U302194, and O002785.

(5). Ordering Defendants to pay appropriate civil penalties up to $32,500 per day for each violation that occurred on or before January 12, 2009, and $37,500 per day for each violation that occurred thereafter;

(6). Ordering Defendants to conduct monitoring and sampling to determine the environmental effects of their violations, to remedy and repair environmental contamination and/or degradation caused by their violations, and restore the environment to its prior uncontaminated condition;

(7). Awarding Plaintiffs' attorney and expert witness fees and all other reasonable expenses incurred in pursuit of this action; and

(8). Granting other such relief as the Court deems just and proper.

Respectfully submitted,

/s/ DEREK O. TEANEY

DEREK O. TEANEY (W.Va. Bar No. 10223)
JOSEPH M. LOVETT (W.Va. Bar No. 6926)
Appalachian Center for the Economy and the Environment
P.O. Box 507
Lewisburg, WV 24901
(304) 645-9006

Counsel for Plaintiffs

Of Counsel:

JENNIFER C. CHAVEZ (D.C. Bar # 493421)
Earthjustice
1625 Massachusetts Ave., Suite 702
Washington, D.C. 20036-2212
Phone: 202-667-4500
Fax: 202-667-2356

APPENDIX A

	PERMITEE	PERMIT	OUTFALL	SOURCE	TYPE	DATE	PARAMETER	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
1	Elk Run Coal Co.	WV1003968	002	DMRs	Daily Maximum	12/15/2008	Aluminum	0.7500	0.9500	1
2	Elk Run Coal Co.	WV1003968	002	DMRs	Daily Maximum	6/5/2008	Aluminum	0.7500	1.3000	1
3	Elk Run Coal Co.	WV1003968	003	DMRs	Daily Maximum	12/8/2009	Aluminum	0.7500	0.7600	1
4	Elk Run Coal Co.	WV1003968	003	DMRs	Daily Maximum	2/25/2009	Aluminum	0.7500	1.3700	1
5	Elk Run Coal Co.	WV1003968	003	DMRs	Daily Maximum	12/15/2008	Aluminum	0.7500	1.1600	1
6	Elk Run Coal Co.	WV1003968	003	DMRs	Daily Maximum	10/3/2008	Aluminum	0.7500	1.0800	1
7	Elk Run Coal Co.	WV1003968	003	DMRs	Daily Maximum	6/19/2008	Aluminum	0.7500	1.3300	1
8	Elk Run Coal Co.	WV1003968	003	DMRs	Daily Maximum	6/5/2008	Aluminum	0.7500	1.6000	1
9	Elk Run Coal Co.	WV1003968	003	EPA RPT	Daily Maximum	4/10/2008	Aluminum	0.7500	1.5200	1
10	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	8/19/2009	Aluminum	0.7500	0.9600	1
11	Elk Run Coal Co.	WV1003968	004	EPA RPT	Daily Maximum	8/17/2009	Aluminum	0.7500	0.9500	1
12	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	3/25/2009	Aluminum	0.7500	0.8400	1
13	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	3/10/2009	Aluminum	0.7500	1.2500	1
14	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	2/25/2009	Aluminum	0.7500	1.8600	1
15	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	2/11/2009	Aluminum	0.7500	1.2600	1
16	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	1/27/2009	Aluminum	0.7500	0.7900	1
17	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	12/30/2008	Aluminum	0.7500	0.9700	1
18	Elk Run Coal Co.	WV1003968	004	EPA RPT	Daily Maximum	12/29/2008	Aluminum	0.7500	1.0700	1
19	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	12/27/2008	Aluminum	0.7500	1.7400	1
20	Elk Run Coal Co.	WV1003968	004	EPA RPT	Daily Maximum	12/15/2008	Aluminum	0.7500	1.3100	1
21	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	8/20/2008	Aluminum	0.7500	0.7900	1
22	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	8/6/2008	Aluminum	0.7500	0.7600	1
23	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	7/2/2008	Aluminum	0.7500	1.6700	1
24	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	6/19/2008	Aluminum	0.7500	2.2900	1
25	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	6/5/2008	Aluminum	0.7500	2.7000	1
26	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	5/21/2008	Aluminum	0.7500	1.1200	1
27	Elk Run Coal Co.	WV1003968	004	DMRs	Daily Maximum	5/8/2008	Aluminum	0.7500	1.3100	1
28	Elk Run Coal Co.	WV1003968	004	EPA RPT	Daily Maximum	4/24/2008	Aluminum	0.7500	4.2200	1
29	Elk Run Coal Co.	WV1003968	004	EPA RPT	Daily Maximum	4/10/2008	Aluminum	0.7500	2.7000	1
30	Elk Run Coal Co.	WV1003968	017	DMRs	Daily Maximum	October-09	pH	9.0000	9.4000	1
31	Elk Run Coal Co.	WV1003968	017	DMRs	Daily Maximum	September-09	pH	9.0000	9.7400	1
32	Elk Run Coal Co.	WV1003968	017	DMRs	Daily Maximum	July-09	pH	9.0000	9.2600	1
33	Elk Run Coal Co.	WV1003968	017	DMRs	Daily Maximum	June-09	pH	9.0000	9.5800	1
34	Elk Run Coal Co.	WV1003968	017	DMRs	Daily Maximum	May-09	pH	9.0000	9.9800	1

35	Elk Run Coal Co.	WV1003968	017	DMRs	Daily Maximum	April-09	pH	9.0000	10.0200	1
36	Elk Run Coal Co.	WV1003968	017	DMRs	Daily Maximum	April-09	pH	9.0000	9.0900	1
37	Elk Run Coal Co.	WV1003968	017	DMRs	Daily Maximum	March-09	pH	9.0000	9.6800	1
38	Elk Run Coal Co.	WV1003968	017	DMRs	Daily Maximum	11/5/2008	pH	9.0000	9.2800	1
39	Elk Run Coal Co.	WV1003968	017	DMRs	Daily Maximum	10/30/2008	pH	9.0000	9.3800	1
40	Elk Run Coal Co.	WV1003968	002	DMRs	Monthly Average	Jan-09	Aluminum	0.4300	0.5500	31
41	Elk Run Coal Co.	WV1003968	002	DMRs	Monthly Average	Dec-08	Aluminum	0.4300	0.5100	31
42	Elk Run Coal Co.	WV1003968	002	DMRs	Monthly Average	Jul-08	Aluminum	0.4300	0.5800	31
43	Elk Run Coal Co.	WV1003968	002	DMRs	Monthly Average	Jun-08	Aluminum	0.4300	0.9300	30
44	Elk Run Coal Co.	WV1003968	002	DMRs	Monthly Average	May-08	Aluminum	0.4300	0.5200	31
45	Elk Run Coal Co.	WV1003968	002	EPA RPT	Monthly Average	Apr-08	Aluminum	0.4300	0.6950	21
46	Elk Run Coal Co.	WV1003968	003	DMRs	Monthly Average	Feb-09	Aluminum	0.4300	0.9250	28
47	Elk Run Coal Co.	WV1003968	003	DMRs	Monthly Average	Jan-09	Aluminum	0.4300	0.4400	31
48	Elk Run Coal Co.	WV1003968	003	DMRs	Monthly Average	Dec-08	Aluminum	0.4300	0.5800	31
49	Elk Run Coal Co.	WV1003968	003	DMRs	Monthly Average	Oct-08	Aluminum	0.4300	1.0800	31
50	Elk Run Coal Co.	WV1003968	003	DMRs	Monthly Average	Aug-08	Aluminum	0.4300	0.4700	31
51	Elk Run Coal Co.	WV1003968	003	DMRs	Monthly Average	Jul-08	Aluminum	0.4300	0.6450	31
52	Elk Run Coal Co.	WV1003968	003	DMRs	Monthly Average	Jun-08	Aluminum	0.4300	1.4650	30
53	Elk Run Coal Co.	WV1003968	003	EPA RPT	Monthly Average	Apr-08	Aluminum	0.4300	2.3200	21
54	Elk Run Coal Co.	WV1003968	004	DMRs	Monthly Average	May-09	Aluminum	0.4300	0.4600	31
55	Elk Run Coal Co.	WV1003968	004	DMRs	Monthly Average	Mar-09	Aluminum	0.4300	1.0450	31
56	Elk Run Coal Co.	WV1003968	004	DMRs	Monthly Average	Feb-09	Aluminum	0.4300	1.5600	28
57	Elk Run Coal Co.	WV1003968	004	DMRs	Monthly Average	Jan-09	Aluminum	0.4300	0.7400	31
58	Elk Run Coal Co.	WV1003968	004	DMRs	Monthly Average	Dec-08	Aluminum	0.4300	1.2725	31
59	Elk Run Coal Co.	WV1003968	004	DMRs	Monthly Average	Aug-08	Aluminum	0.4300	0.7750	31
60	Elk Run Coal Co.	WV1003968	004	DMRs	Monthly Average	Jul-08	Aluminum	0.4300	1.6700	31
61	Elk Run Coal Co.	WV1003968	004	DMRs	Monthly Average	Jun-08	Aluminum	0.4300	2.4950	30
62	Elk Run Coal Co.	WV1003968	004	DMRs	Monthly Average	May-08	Aluminum	0.4300	1.2150	31
63	Elk Run Coal Co.	WV1003968	004	EPA RPT	Monthly Average	Apr-08	Aluminum	0.4300	3.4600	21
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APPENDIX B

	PERMITEE	PERMIT	OUTFALL	SOURCE	TYPE	DATE	PARAMETER	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
1	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	Dec-09	Aluminum	0.7500	0.9800	1
2	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	8/16/2009	Aluminum	0.7500	1.2200	1
3	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	5/20/2009	Aluminum	0.7500	0.7600	1
4	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	5/8/2009	Aluminum	0.7500	0.9300	1
5	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	4/17/2009	Aluminum	0.7500	0.8800	1
6	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	4/8/2009	Aluminum	0.7500	0.8400	1
7	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	3/20/2009	Aluminum	0.7500	2.1000	1
8	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	2/19/2009	Aluminum	0.7500	13.8500	1
9	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	2/9/2009	Aluminum	0.7500	0.9800	1
10	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	1/26/2009	Aluminum	0.7500	1.2800	1
11	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	1/13/2009	Aluminum	0.7500	26.7100	1
12	Independence Coal Co	WV1016024	021	DMRs	Daily Maximum	5/23/2008	Aluminum	0.7500	0.7600	1
13	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	Dec-09	Aluminum	0.4300	0.9800	31
14	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	Sep-09	Aluminum	0.4300	0.6300	30
15	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	Aug-09	Aluminum	0.4300	0.7700	31
16	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	Jun-09	Aluminum	0.4300	0.5600	30
17	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	May-09	Aluminum	0.4300	0.8450	31
18	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	Apr-09	Aluminum	0.4300	0.8600	30
19	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	Mar-09	Aluminum	0.4300	2.1000	31
20	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	Feb-09	Aluminum	0.4300	7.4150	28
21	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	Jan-09	Aluminum	0.4300	13.9950	31
22	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	Jun-08	Aluminum	0.4300	0.7500	30
23	Independence Coal Co	WV1016024	021	DMRs	Monthly Average	May-08	Aluminum	0.4300	0.5000	31
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APPENDIX C

	PERMITEE	PERMIT	OUTFALL	SOURCE	TYPE	DATE	PARAMETER	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
1	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	12/30/2009	Aluminum	0.7500	1.5700	1
2	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	6/25/2009	Aluminum	0.7500	1.0000	1
3	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	3/16/2009	Aluminum	0.7500	2.1900	1
4	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	2/2/2009	Aluminum	0.7500	1.6000	1
5	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	1/19/2009	Aluminum	0.7500	1.6000	1
6	Marfork Coal Co.	WV1013301	034	EPA RPT	Daily Maximum	1/15/2009	Aluminum	0.7500	0.9900	1
7	Marfork Coal Co.	WV1013301	034	EPA RPT	Daily Maximum	1/13/2009	Aluminum	0.7500	0.8200	1
8	Marfork Coal Co.	WV1013301	034	EPA RPT	Daily Maximum	12/22/2008	Aluminum	0.7500	1.0300	1
9	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	12/22/2008	Aluminum	0.7500	1.1600	1
10	Marfork Coal Co.	WV1013301	034	EPA RPT	Daily Maximum	12/15/2008	Aluminum	0.7500	0.9800	1
11	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	12/30/2009	Iron	1.3100	1.6300	1
12	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	3/16/2009	Iron	1.3100	1.4100	1
13	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	1/19/2009	Iron	1.3100	1.4600	1
14	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	4/3/2009	Total Suspended Solids	70.0000	402.0000	1
15	Marfork Coal Co.	WV1013301	034	EPA RPT	Daily Maximum	3/27/2009	Total Suspended Solids	70.0000	91.0000	1
16	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	3/16/2009	Total Suspended Solids	70.0000	277.0000	1
17	Marfork Coal Co.	WV1013301	034	EPA RPT	Daily Maximum	2/20/2009	Total Suspended Solids	70.0000	71.0000	1
18	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	2/2/2009	Total Suspended Solids	70.0000	220.0000	1
19	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	1/2/2009	Total Suspended Solids	70.0000	78.0000	1
20	Marfork Coal Co.	WV1013301	034	DMRs	Daily Maximum	12/15/2008	Total Suspended Solids	70.0000	158.0000	1
21	Marfork Coal Co.	WV1013301	037	EPA RPT	Daily Maximum	12/22/2009	Aluminum	0.7500	0.8200	1
22	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	12/17/2009	Aluminum	0.7500	1.3500	1
23	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	4/27/2009	Aluminum	0.7500	1.5800	1
24	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	4/15/2009	Aluminum	0.7500	2.2900	1
25	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	3/31/2009	Aluminum	0.7500	1.0700	1
26	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	3/24/2009	Aluminum	0.7500	1.8400	1
27	Marfork Coal Co.	WV1013301	037	EPA RPT	Daily Maximum	2/27/2009	Aluminum	0.7500	1.7000	1
28	Marfork Coal Co.	WV1013301	037	EPA RPT	Daily Maximum	2/23/2009	Aluminum	0.7500	1.6400	1
29	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	2/11/2009	Aluminum	0.7500	2.0600	1
30	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	1/20/2009	Aluminum	0.7500	2.0100	1
31	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	1/13/2009	Aluminum	0.7500	3.1300	1
32	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	12/31/2008	Aluminum	0.7500	1.7400	1
33	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	12/23/2008	Aluminum	0.7500	3.6400	1
34	Marfork Coal Co.	WV1013301	037	DMRs	Daily Maximum	11/7/2008	Aluminum	0.7500	0.9100	1

35	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Dec-09	Aluminum	0.4300	0.5600	31
36	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Mar-09	Aluminum	0.4300	0.8425	31
37	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Feb-09	Aluminum	0.4300	0.5425	28
38	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Jan-09	Aluminum	0.4300	0.5542	31
39	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Dec-08	Aluminum	0.4300	0.6383	31
40	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Dec-09	Iron	0.7600	0.8650	31
41	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Jul-08	Iron	0.7600	0.9800	31
42	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Apr-09	Total Suspended Solids	35.0000	99.0000	30
43	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Mar-09	Total Suspended Solids	35.0000	99.0000	31
44	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Feb-09	Total Suspended Solids	35.0000	48.1429	28
45	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Dec-08	Total Suspended Solids	35.0000	42.6667	31
46	Marfork Coal Co.	WV1013301	034	DMRs	Monthly Average	Aug-08	Total Suspended Solids	35.0000	47.0000	31
47	Marfork Coal Co.	WV1013301	037	DMRs	Monthly Average	Dec-09	Aluminum	0.4300	0.6233	31
48	Marfork Coal Co.	WV1013301	037	DMRs	Monthly Average	Apr-09	Aluminum	0.4300	1.9350	30
49	Marfork Coal Co.	WV1013301	037	DMRs	Monthly Average	Mar-09	Aluminum	0.4300	1.4550	31
50	Marfork Coal Co.	WV1013301	037	DMRs	Monthly Average	Feb-09	Aluminum	0.4300	1.3975	28
51	Marfork Coal Co.	WV1013301	037	DMRs	Monthly Average	Jan-09	Aluminum	0.4300	2.5700	31
52	Marfork Coal Co.	WV1013301	037	DMRs	Monthly Average	Dec-08	Aluminum	0.4300	2.6900	31
53	Marfork Coal Co.	WV1013301	037	DMRs	Monthly Average	Nov-08	Aluminum	0.4300	0.7100	30
54	Marfork Coal Co.	WV1013301	037	DMRs	Monthly Average	Oct-08	Aluminum	0.4300	0.5575	31
										642

APPENDIX D

	PERMITEE	PERMIT	OUTFALL	SOURCE	TYPE	DATE	PARAMETER	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
1	Marfork Coal Co.	WV1014838	002	DMRs	Daily Maximum	9/16/2009	Aluminum	0.7500	1.8500	1
2	Marfork Coal Co.	WV1014838	002	DMRs	Daily Maximum	8/26/2009	Aluminum	0.7500	1.5700	1
3	Marfork Coal Co.	WV1014838	002	DMRs	Daily Maximum	3/17/2009	Aluminum	0.7500	2.3500	1
4	Marfork Coal Co.	WV1014838	002	EPA RPT	Daily Maximum	3/12/2009	Aluminum	0.7500	2.3000	1
5	Marfork Coal Co.	WV1014838	002	DMRs	Daily Maximum	2/25/2009	Aluminum	0.7500	0.9400	1
6	Marfork Coal Co.	WV1014838	002	EPA RPT	Daily Maximum	2/17/2009	Aluminum	0.7500	0.8600	1
7	Marfork Coal Co.	WV1014838	002	DMRs	Daily Maximum	1/27/2009	Aluminum	0.7500	1.0800	1
8	Marfork Coal Co.	WV1014838	002	DMRs	Daily Maximum	8/26/2009	Total Suspended Solids	70.0000	188.0000	1
9	Marfork Coal Co.	WV1014838	002	DMRs	Daily Maximum	3/17/2009	Total Suspended Solids	70.0000	141.0000	1
10	Marfork Coal Co.	WV1014838	002	EPA RPT	Daily Maximum	3/12/2009	Total Suspended Solids	70.0000	108.0000	1
11	Marfork Coal Co.	WV1014838	002	EPA RPT	Daily Maximum	2/25/2009	Total Suspended Solids	70.0000	72.0000	1
12	Marfork Coal Co.	WV1014838	002	DMRs	Daily Maximum	2/25/2009	Total Suspended Solids	70.0000	74.0000	1
13	Marfork Coal Co.	WV1014838	002	DMRs	Monthly Average	Sep-09	Aluminum	0.4300	1.8500	30
14	Marfork Coal Co.	WV1014838	002	DMRs	Monthly Average	Aug-09	Aluminum	0.4300	0.9150	31
15	Marfork Coal Co.	WV1014838	002	DMRs	Monthly Average	Mar-09	Aluminum	0.4300	1.5700	31
16	Marfork Coal Co.	WV1014838	002	DMRs	Monthly Average	Feb-09	Aluminum	0.4300	0.5125	28
17	Marfork Coal Co.	WV1014838	002	DMRs	Monthly Average	Jul-08	Aluminum	0.4300	0.4650	31
18	Marfork Coal Co.	WV1014838	002	DMRs	Monthly Average	Aug-09	Total Suspended Solids	35.0000	94.5000	31
19	Marfork Coal Co.	WV1014838	002	DMRs	Monthly Average	Mar-09	Total Suspended Solids	35.0000	83.3333	31
20	Marfork Coal Co.	WV1014838	002	DMRs	Monthly Average	Feb-09	Total Suspended Solids	35.0000	37.6000	28
										253

APPENDIX E

	PERMITEE	PERMIT	OUTFALL	SOURCE	TYPE	DATE	PARAMETER	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
1	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Dec-09	Aluminum	0.7500	1.16	1
2	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Sep-09	Aluminum	0.7500	1.0900	1
3	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Aug-09	Aluminum	0.7500	1.2500	1
4	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Jul-09	Aluminum	0.7500	1.0500	1
5	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Jun-09	Aluminum	0.7500	1.0800	1
6	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Jun-09	Aluminum	0.7500	0.7800	1
7	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	May-09	Aluminum	0.7500	0.9000	1
8	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	May-09	Aluminum	0.7500	1.0500	1
9	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	4/24/2009	Aluminum	0.7500	1.9500	1
10	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Apr-09	Aluminum	0.7500	1.1600	1
11	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Mar-09	Aluminum	0.7500	0.8600	1
12	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Feb-09	Aluminum	0.7500	0.8300	1
13	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Jan-09	Aluminum	0.7500	0.9800	1
14	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Jan-09	Aluminum	0.7500	0.8000	1
15	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	Dec-08	Aluminum	0.7500	1.0900	1
16	Peerless Eagle Coal Co.	WV1002040	004	EPA RPT	Daily Maximum	9/11/2008	Aluminum	0.7500	0.8100	1
17	Peerless Eagle Coal Co.	WV1002040	004	EPA RPT	Daily Maximum	9/10/2008	Aluminum	0.7500	1.4000	1
18	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	9/9/2008	Aluminum	0.7500	1.4900	1
19	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	7/1/2008	Aluminum	0.7500	0.8600	1
20	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	6/23/2008	Aluminum	0.7500	0.9200	1
21	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	6/7/2008	Aluminum	0.7500	0.8600	1
22	Peerless Eagle Coal Co.	WV1002040	004	EPA RPT	Daily Maximum	5/30/2008	Aluminum	0.7500	0.9200	1
23	Peerless Eagle Coal Co.	WV1002040	004	EPA RPT	Daily Maximum	5/14/2008	Aluminum	0.7500	0.9400	1
24	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Daily Maximum	4/28/2008	Aluminum	0.7500	1.6300	1
25	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Dec-09	Aluminum	0.4300	0.8700	31
26	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Sep-09	Aluminum	0.4300	0.6200	30
27	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Aug-09	Aluminum	0.4300	0.6650	31
28	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Jul-09	Aluminum	0.4300	1.0500	31
29	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Jun-09	Aluminum	0.4300	0.9300	30
30	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	May-09	Aluminum	0.4300	0.9750	31
31	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Apr-09	Aluminum	0.4300	1.5550	30
32	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Mar-09	Aluminum	0.4300	0.7700	31
33	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Feb-09	Aluminum	0.4300	0.7450	28
34	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Jan-09	Aluminum	0.4300	0.8900	31

35	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Dec-08	Aluminum	0.4300	0.4350	31
36	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Jul-08	Aluminum	0.4300	0.5350	31
37	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Jun-08	Aluminum	0.4300	0.8900	30
38	Peerless Eagle Coal Co.	WV1002040	004	EPA RPT	Monthly Averag	May-08	Aluminum	0.4300	0.9300	31
39	Peerless Eagle Coal Co.	WV1002040	004	DMRs	Monthly Averag	Apr-08	Aluminum	0.4300	1.1100	21
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APPENDIX F

	PERMITEE	PERMIT	OUTFALL	SOURCE	TYPE	DATE	PARAMETER	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
1	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Daily Maximum	Dec-09	Aluminum	0.7500	0.9600	1
2	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Daily Maximum	Oct-09	Aluminum	0.7500	0.9000	1
3	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Daily Maximum	3/8/09	Aluminum	0.7500	0.8300	1
4	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Daily Maximum	2/17/09	Aluminum	0.7500	0.9400	1
5	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Daily Maximum	2/2/09	Aluminum	0.7500	0.8000	1
6	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Daily Maximum	12/21/2008	Aluminum	0.7500	1.0900	1
7	Peerless Eagle Coal Co.	WV1014587	033	DMRs	Daily Maximum	Dec-09	Aluminum	0.7500	0.9700	1
8	Peerless Eagle Coal Co.	WV1014587	033	DMRs	Daily Maximum	1/29/2009	Aluminum	0.7500	1.3900	1
9	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Monthly Average	Dec-09	Aluminum	0.4300	0.7550	31
10	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Monthly Average	Nov-09	Aluminum	0.4300	0.6200	30
11	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Monthly Average	Oct-09	Aluminum	0.4300	0.7250	31
12	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Monthly Average	Jun-09	Aluminum	0.4300	0.5750	30
13	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Monthly Average	Apr-09	Aluminum	0.4300	0.4700	30
14	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Monthly Average	Mar-09	Aluminum	0.4300	0.5900	31
15	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Monthly Average	Feb-09	Aluminum	0.4300	0.8700	28
16	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Monthly Average	Jan-09	Aluminum	0.4300	0.5200	31
17	Peerless Eagle Coal Co.	WV1014587	013	DMRs	Monthly Average	Dec-08	Aluminum	0.4300	0.4980	31
18	Peerless Eagle Coal Co.	WV1014587	033	DMRs	Monthly Average	Dec-09	Aluminum	0.4300	0.5100	31
19	Peerless Eagle Coal Co.	WV1014587	033	DMRs	Monthly Average	Jan-09	Aluminum	0.4300	0.8000	31
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APPENDIX G

	PERMITEE	PERMIT	OUTFALL	SOURCE	TYPE	DATE	PARAMETER	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
1	Power Mountain Coal Co.	WV0091405	001	DMRs	Daily Maximum	Nov-09	Aluminum	0.1400	0.4900	1
2	Power Mountain Coal Co.	WV0091405	001	DMRs	Daily Maximum	Nov-09	Aluminum	0.1400	0.3300	1
3	Power Mountain Coal Co.	WV0091405	001	DMRs	Daily Maximum	Oct-09	Aluminum	0.1400	0.3100	1
4	Power Mountain Coal Co.	WV0091405	001	DMRs	Daily Maximum	Aug-09	Aluminum	0.1400	0.4800	1
5	Power Mountain Coal Co.	WV0091405	001	DMRs	Daily Maximum	Jul-09	Aluminum	0.1400	0.2300	1
6	Power Mountain Coal Co.	WV0091405	001	DMRs	Daily Maximum	Jul-09	Aluminum	0.1400	0.1800	1
7	Power Mountain Coal Co.	WV0091405	001	DMRs	Daily Maximum	6/27/2009	Aluminum	0.1400	0.1900	1
8	Power Mountain Coal Co.	WV0091405	001	DMRs	Daily Maximum	4/15/2009	Aluminum	0.1400	0.1600	1
9	Power Mountain Coal Co.	WV0091405	001	DMRs	Daily Maximum	3/28/2009	Aluminum	0.1400	0.1600	1
10	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	Dec-09	Aluminum	0.1400	0.2400	1
11	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	Dec-09	Aluminum	0.1400	0.2200	1
12	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	Aug-09	Aluminum	0.1400	0.1600	1
13	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	Jul-09	Aluminum	0.1400	0.2100	1
14	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	5/26/2009	Aluminum	0.1400	0.5600	1
15	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	5/9/2009	Aluminum	0.1400	0.3200	1
16	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	4/23/2009	Aluminum	0.1400	0.2200	1
17	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	4/7/2009	Aluminum	0.1400	0.2200	1
18	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	3/30/2009	Aluminum	0.1400	0.2800	1
19	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	2/27/2009	Aluminum	0.1400	0.2400	1
20	Power Mountain Coal Co.	WV0091405	005	EPA RPT	Daily Maximum	12/30/2008	Aluminum	0.1400	0.1600	1
21	Power Mountain Coal Co.	WV0091405	005	DMRs	Daily Maximum	12/17/2008	Aluminum	0.1400	0.6800	1
22	Power Mountain Coal Co.	WV0091405	001	DMRs	Monthly Average	Nov-09	Aluminum	0.0800	0.4100	30
23	Power Mountain Coal Co.	WV0091405	001	DMRs	Monthly Average	Oct-09	Aluminum	0.0800	0.3100	31
24	Power Mountain Coal Co.	WV0091405	001	DMRs	Monthly Average	Aug-09	Aluminum	0.0800	0.2700	31
25	Power Mountain Coal Co.	WV0091405	001	DMRs	Monthly Average	Jul-09	Aluminum	0.0800	0.2050	31
26	Power Mountain Coal Co.	WV0091405	001	DMRs	Monthly Average	Jun-09	Aluminum	0.0800	0.1580	30
27	Power Mountain Coal Co.	WV0091405	001	DMRs	Monthly Average	Apr-09	Aluminum	0.0800	0.1250	30
28	Power Mountain Coal Co.	WV0091405	001	DMRs	Monthly Average	Feb-09	Aluminum	0.0800	0.1000	28
29	Power Mountain Coal Co.	WV0091405	001	DMRs	Monthly Average	Mar-09	Aluminum	0.0800	0.1600	31
30	Power Mountain Coal Co.	WV0091405	005	DMRs	Monthly Average	Dec-09	Aluminum	0.0800	0.2300	31
31	Power Mountain Coal Co.	WV0091405	005	DMRs	Monthly Average	Aug-09	Aluminum	0.0800	0.0950	31
32	Power Mountain Coal Co.	WV0091405	005	DMRs	Monthly Average	Jul-09	Aluminum	0.0800	0.1750	31
33	Power Mountain Coal Co.	WV0091405	005	DMRs	Monthly Average	May-09	Aluminum	0.0800	0.4400	31
34	Power Mountain Coal Co.	WV0091405	005	DMRs	Monthly Average	Apr-09	Aluminum	0.0800	0.2200	30

35	Power Mountain Coal Co.	WV0091405	005	DMRs	Monthly Average	Mar-09	Aluminum	0.0800	0.1750	31
36	Power Mountain Coal Co.	WV0091405	005	DMRs	Monthly Average	Feb-09	Aluminum	0.0800	0.1750	28
37	Power Mountain Coal Co.	WV0091405	005	DMRs	Monthly Average	Dec-08	Aluminum	0.0800	0.3033	31
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