

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
CIVIL ACTION NO. 10-CI-01767  
DIVISION I

COMMONWEALTH OF KENTUCKY, )  
ENERGY AND ENVIRONMENT CABINET, )

Plaintiff, )

) Civil Action No. 10-CI-\_\_

FRASURE CREEK MINING, LLC )

Defendant. )

CONSENT JUDGMENT

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Come the Parties, Plaintiff, Commonwealth of Kentucky, Energy and Environment Cabinet and Defendant, Frasure Creek Mining, LLC and state the following:

A. WHEREAS, Plaintiff the Commonwealth of Kentucky, Energy and Environment Cabinet (hereinafter "the Cabinet"), is an agency of the Commonwealth charged by statute with the duty to enforce laws for the protection of human health and the environment pursuant to KRS Chapter 224, the Clean Water Act (CWA), 33 U.S.C.1251 et. seq and regulations promulgated pursuant thereto.

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B. WHEREAS, Frasure Creek Mining, LLC (hereinafter, "Frasure Creek") owns and operates surface coal mining operations in eastern Kentucky pursuant to surface disturbance permits issued by the Kentucky Division of Mine Reclamation and Enforcement ("DMRE"), a Division within the Cabinet's Department for Natural Resources. Stormwater and other wastewater discharges (hereinafter "wastewater") from the Frasure Creek surface coal mining operations are authorized pursuant to Kentucky Pollutant Discharge Elimination System ("KPDES") permits issued by the Kentucky Division of Water, within the Cabinet's Department for Environmental Protection. A listing of the DMRE permits and corresponding KPDES permits that have been issued to Frasure Creek that are the subject of this Consent Judgment are set forth in Appendix A and incorporated as if fully set out in this Consent Judgment.

C. WHEREAS, on or about October 7, 2010 the Cabinet was served with a Notice of Intent to Sue ("NOI") pursuant to § 505(b) of the Clean Water Act ("CWA"), 33 U.S.C. § 1365(b), on behalf of several environmental advocacy organizations and individuals alleging violations of KPDES permit requirements by Frasure Creek at several of its surface mining facilities. Thereafter, the Cabinet conducted inspections and investigations to confirm whether Frasure Creek had violated its KPDES permits and the underlying requirements of the Clean Water Act ("CWA"), Kentucky Revised Statutes ("KRS") Chapter 224, and the Cabinet's implementing regulations, as alleged in the NOI. In addition to alleged violations set out in the NOI for certain Frasure Creek permits, the Cabinet's investigations resulted in its finding of additional alleged violations at the identified facilities as well as additional alleged violations of KPDES permits at other Frasure Creek surface coal mining operations.

D. WHEREAS, as set forth in the Cabinet's Complaint, the Cabinet has determined that Frasure Creek has violated terms and conditions of its KPDES permits and the obligations

imposed by KRS Chapter 224, the CWA, and the Cabinet's KPDES implementing regulations, relating to: discharge monitoring and reporting (401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(l)(4)); effluent limits (401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(a)); recordkeeping of monitoring information (401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(j)(2)); quality assurance and quality control for maintaining a system designed to assure that monitoring and analysis requirements are properly implemented (401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(e)); degradation of surface waters (401 KAR 10:031 Section 2); and Best Management Practices Plans (401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(a)). The Cabinet has also determined that discharge monitoring reports ("DMRs") submitted under all of Frasure Creek's KPDES permits were signed and certified by a person without appropriate authority as specified in 401 KAR 5:065 Section 2(1), as 40 CFR 122.22(a) or 40 CFR 122.22(b) and 40 CFR 122.41(k), or were not signed and certified. The Cabinet alleges that Frasure Creek has violated these signatory requirements with respect to every DMR submitted in the past five (5) years. The Cabinet thereby found that Frasure Creek failed to utilize a system designed to assure that qualified personnel properly gathered and evaluated the DMR information before it was submitted for each of its facilities during that period. The Cabinet also charges that Frasure Creek failed to maintain records of monitoring information as required by 40 CFR 122.41(j) for a period of three (3) years from the date of its monitoring and that Frasure Creek or its contractor failed to conduct monitoring in compliance with test procedures approved under 40 CFR Part 136 (401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(l)(4)).

E. WHEREAS, as set forth in the Complaint, a review of Frasure Creek's Discharge Monitoring Reports ("DMRs") reveals that, on numerous occasions, Frasure Creek has included incorrect and erroneous data and other information in DMRs due to transcription errors and other

mistakes and lack of sufficient oversight in completing DMRs, which were prepared by a third party contractor. The Cabinet has found no evidence tending to support a claim of fraudulent preparation or submittal of DMRs by Frasure Creek. Transcription errors that indicated noncompliance were not explained on the DMRs as required by 40 CFR 122.41(l)(7). The Cabinet determined that Frasure Creek also failed on numerous occasions to include all monitored data on DMRs with respect to DMRE permits that share common sedimentation structures and outfalls, which constitutes a violation of 40 CFR 122.41(l)(4). The Cabinet has also determined that Frasure Creek's third party contractor has failed to fully comply with standard reference methods for conducting laboratory analyses for wastewater samples and failed to utilize appropriate quality assurance and quality control procedures within the contractor's laboratory, as required by 40 CFR Part 136 and 40 CFR 122.41(e) and (j). The Cabinet further charges that Frasure Creek failed to conduct specific conductivity testing on wastewater samples collected pursuant to its Coal General KPDES permits in Kentucky in August and September 2009, immediately after the new general KPDES permit became effective in Kentucky.

F. WHEREAS, the Cabinet has filed a Complaint in this action contemporaneously with this Consent Judgment, alleging that Defendant, Frasure Creek is civilly liable for violations of Kentucky Revised Statutes (KRS), related Kentucky Administrative Regulations (KAR), and the Clean Water Act as set forth in the Notices of Violation (NOVs) and incorporated as if fully set out in the Complaint .

G. WHEREAS, Frasure Creek alleges that it underwent a substantial management change in 2009 and contends that the practices that led to the alleged violations were initiated by prior management.

H. WHEREAS, on November 29, 2010 the Cabinet issued Notice(s) of Violation (“NOVs”) to Frasure Creek for the above findings, alleging violations of the following environmental statutes and regulations:

- (1) 401 KAR 5:065 Section 2(1) [as in 40 C.F.R. 122.41(j)(2)]
- (2) 401 KAR 5:065 Section 2(1) [as in 40 C.F.R. 122.41(l)(4)]
- (3) 401 KAR 5:065 Section 2(1) [as in 40 C.F.R. 122.41(e)]
- (4) 401 KAR 5:065 Section 2(1) [as in 40 C.F.R. 122.41(a)]
- (5) 401 KAR 5:065 Section 2(1) [ as in 40 C.F.R. 122.41(j)(4)]
- (6) KRS 224.70-110
- (7) 401 KAR 10:031 Section 2
- (8) 401 KAR 5:065 Section 2

The NOVs are submitted as Exhibits 1 to 37(a) to the Complaint and are incorporated as if fully set out in the Complaint.

I. WHEREAS, during the Cabinet’s investigations, it met with representatives of Frasure Creek to discuss and obtain the Company’s response to the Cabinet’s findings and Notices of Violations. The Parties to this Consent Judgment have negotiated in good faith and reached a settlement of the claims raised in the Complaint.

J. WHEREAS, pursuant to this Consent Judgment, with respect to the matters set forth in the Complaint, as generally described above, Frasure Creek shall:

- (1) Pay a civil penalty to the Cabinet;
- (2) Submit a Corrective Action Plan and complete remedial measures as more fully described herein to assure that it complies with KRS Chapter 224, the Clean Water Act, and implementing regulations with respect to discharges from its surface coal mining operations; and

(3) Satisfy all other terms of this Consent Judgment.

K. WHEREAS, Frasure Creek does not admit any liability to the Cabinet arising out of the transactions or occurrences alleged in the Complaint but agrees to the entry of this Consent Judgment to resolve the violations alleged.

L. WHEREAS, the Parties recognize, and the Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated by the Parties as a settlement of the Cabinet's claims in good faith and will avoid litigation between the Parties, and that this Consent Judgment is fair, reasonable, and in the public interest.

NOW, THEREFORE, before taking testimony and without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of the claims in this action pursuant to KRS 224.99-010(9). The Court has personal jurisdiction over the Parties to this Consent Judgment. Venue lies in this Court because the discharges occurred in the Commonwealth of Kentucky and the Defendant conducts business in the Commonwealth of Kentucky. For purposes of this Consent Judgment, or any action to enforce this Judgment, Defendant consents to the Court's jurisdiction over this Judgment or such action and over Defendant, and consents to the venue.

#### **II. APPLICABILITY**

2. The obligations of this Consent Judgment apply to and are binding upon the Cabinet, and upon Frasure Creek, and any successors, assigns or other entities or persons otherwise bound by law.

3. Frasure Creek shall provide a copy of this Consent Judgment to all contractors that are retained to provide services related to KPDES permit monitoring and analysis. Frasure Creek shall condition any contract to perform such work upon performance of the work in conformity with the terms of this Consent Judgment.

4. In any action to enforce this Consent Judgment, Frasure Creek shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Judgment.

### **III. DEFINITIONS**

5. Terms used in this Consent Judgment that are defined or used in KRS Chapter 224, the regulations promulgated thereunder, and the CWA, shall have the meanings assigned to them in such statutes or regulations, unless otherwise provided in this Judgment. Whenever terms set forth below are used in this Consent Judgment, the following definitions shall apply.

a. Cabinet shall mean the Commonwealth of Kentucky Energy and Environment Cabinet, an agency of the Commonwealth, or its successor.

b. Complaint shall mean the complaint filed by the Plaintiff in this action, unless noted otherwise.

c. Consent Judgment or Judgment shall mean this Consent Judgment.

d. Day shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

e. Defendant shall mean Frasure Creek Mining, LLC or its successor in interest.

f. KPDES permit shall mean any individual or general Kentucky Pollutant Discharge Elimination System permit issued to Frasure Creek for wastewater discharges from its coal mining operations that is listed in Appendix A to this Consent Judgment or in the Complaint.

g. Quarter shall mean a calendar quarter. In computing any period of time under this Consent Judgment, where the last day of a calendar quarter would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

h. Paragraph shall mean a portion of this Consent Judgment identified by a number or letter.

i. Parties shall mean the Cabinet and Frasure Creek Mining, LLC.

j. Plaintiff shall mean the Cabinet.

k. State shall mean the Commonwealth of Kentucky.

#### **IV. CIVIL PENALTIES**

6. Frasure Creek shall pay a civil penalty to the Cabinet for the violations alleged in the amount of three hundred ten thousand dollars (\$310,000). Frasure Creek shall pay the civil penalty as set forth below:

a. Civil penalty payments shall be made by cashier's check, certified check or money order. The check or money order shall be made payable to "The Kentucky State Treasurer" and sent to the Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601.

b. The civil penalty shall be paid in ten (10) installments of thirty one thousand dollars (\$31,000.00) each, as follows:

(1) The first installment payment of thirty one thousand dollars (\$31,000) shall be paid within fifteen (15) business days after the Consent Judgment is entered as a final order by the Franklin Circuit Court.

(2) Subsequent civil penalty installment payments of thirty one thousand dollars (\$31,000) each shall be made quarterly, beginning the first quarter following the first installment payment. Each quarterly installment payment shall be made before the end of each calendar quarter (i.e., March 31, June 30, September 30, and December 31 of each year), beginning in 2011 and continuing for nine (9) successive calendar quarters.

c. If Frasure Creek fails to pay any of the installments on or before the due dates set forth above, the Cabinet may declare the remaining unpaid balance of the total civil penalty immediately due and demand payment in full.

## **V. REMEDIAL MEASURES**

7. Frasure Creek shall review its surface coal mining operations listed in Appendix A and, shall prepare a Corrective Action Plan. The Corrective Action Plan ("CAP") shall be submitted to the Cabinet for review by December 22, 2010 and shall contain, or identify:

a. The procedures and protocols Frasure Creek shall implement to ensure compliance with the monitoring, testing, recordkeeping, and DMR reporting requirements of the law and of its KPDES permits. The permittee must monitor parameters in accordance with procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O.

b. Practices for ensuring DMRs contain complete and accurate information for all operations, including operations that share discharge outfalls, and for providing prompt submittal of corrected DMR information where required under 401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(l)(8).

c. A copy of the laboratory Standard Operating Procedures plan (SOP) and Quality Assurance/Quality Control protocols that shall be used by Frasure Creek or its contractor.

i) Frasure Creek shall verify its laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis.

ii) Frasure Creek shall verify its laboratory has developed and is implementing proper Quality Assurance/Quality Control protocols.

d. A copy of a chain of custody form, bench sheet form, and maintenance, reagent, calibration and precipitation log forms that Frasure Creek's laboratory shall use; each form submitted shall include the following information, as appropriate:

- i. The date, exact location, and time of sampling or measurements;
- ii. identification of individual(s) who performed sampling or measurements;
- iii. date analysis was performed;
- iv. identification of individual(s) who performed analysis;
- v. analytical technique or methods used; and
- vi. The results of analysis.

8. Frasure Creek shall submit with its DMRs for the 4<sup>th</sup> quarter of 2010 the associated chain(s) of custody, bench sheets and analytical data for December, 2010. Frasure

Creek shall submit with its DMRs for the 1st quarter of 2011 the associated chain(s) of custody, bench sheets and analytical data.

9. Frasure Creek shall identify measures it shall take to eliminate any potential substandard discharge(s) from the Frasure Creek LLC - West Lick Mine facility and to mitigate the impact to the receiving stream (Hurricane Branch) from the discharge from Pond 113, including a schedule of implementation of such measures.

10. Frasure Creek shall, by December 22, 2010, provide the Cabinet with written notification of the responsible corporate officer as specified in 401 KAR 5:065 Section 2(1), as in 40 CFR 122.22(a) or the duly authorized representative of such person as provided for in 401 KAR 5:065 Section 2(1), as in 40 CFR 122.22(b) that will be responsible for certifying DMRs, beginning with the Fourth Quarter 2010 DMRs required under Frasure Creek's KPDES permits. If Frasure Creek elects to provide the Cabinet with a written authorization of one or more duly authorized representatives, the authorization must be made consistent with 401 KAR 5:065 Section 2(1), as in 40 CFR 122.22(d) and shall specify the KPDES permits for which each such duly authorized representative is responsible. Any changes to a duly authorized representative shall be made in writing consistent with 401 KAR 5:065 Section 2(1), as in 40 CFR 122.22(c).

11. Frasure Creek by December 22, 2010 shall submit for review by the Cabinet, protocols to be used by Frasure Creek that are designed to assure that qualified personnel properly gather and evaluate monitoring data and other information submitted on DMRs, and that the information and data provided is representative of the monitored activity and otherwise complies with the requirements of 401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(j) and 40 CFR 122.41(l)(4) and Frasure Creek's KPDES permits. The protocol shall also require that all instances of noncompliance that are not otherwise immediately reportable be reported at the time

DMR reports are submitted as required by 401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(l)(7).

12. As required by 401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(e), Frasure Creek shall at all times properly operate and maintain its facilities and systems of treatment. Frasure Creek shall comply with effluent limitations established under its KPDES permits. Frasure Creek shall submit a Best Management Practices (BMP) plan to the Cabinet for review by December 22, 2010 identifying protocols Frasure Creek shall use to ensure that best management practices are maintained as required by Frasure Creek's KPDES permits and, as required by 401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(e), that Frasure Creek properly operates and maintains its facilities and systems of treatment. Frasure Creek shall keep a copy of the BMP plan on each permit site.

13. Frasure Creek shall comply with the terms and conditions of its permits.

14. The Corrective Action Plan and other submittals required of Frasure Creek by this Consent Judgment shall be to:

Director, Division of Enforcement  
300 Fair Oaks Lane  
Frankfort, Kentucky 40601

#### **VI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

15. This Consent Judgment resolves the violations specified above and in the Complaint and Notices of Violation, and those like violations, whether of KPDES or DMRE permits, which may exist on Defendants' permits listed in Appendix A but which were not specifically identified in the course of the Cabinet's investigation of the allegations in the Notice of Intent to Sue, for the period 5 years prior and up to date of filing the Complaint and this Consent Judgment. Except for those matters resolved through this Consent Judgment, nothing

contained herein shall be construed to waive or limit any remedy or cause of action by the Cabinet based on statutes or regulations under its jurisdiction, and Defendant reserves its defenses thereto. Except for the matters resolved herein, the Cabinet expressly reserves its right at any time to issue Administrative Orders and to take any other action it deems necessary, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred and the Defendant reserves its defenses thereto.

16. This Judgment shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to the Defendant. The Defendant reserves its right to defenses thereto, except that the Defendant shall not use this Consent Judgment as a defense. Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Cabinet in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved herein.

17. As a material term of this Consent Judgment, the Parties state that the Consent Judgment is not intended to preclude, nor shall it preclude, any defense offered by Defendant in any other civil litigation, whether based upon principles of waiver, laches, *res judicata*, collateral estoppel, equitable estoppel, issue preclusion, claim preclusion, or any other preclusive doctrine. Defendant further specifically reserves its right to raise any defense that may be available to it in any civil litigation regarding matters addressed herein involving any individual, person, or entity that is not party to this Consent Judgment.

18. This Consent Judgment is without prejudice to the rights of the Cabinet against Defendant with respect to all matters other than those expressly specified above.

19. The Defendant waives its right to any hearing on the matters set forth herein. However, failure by the Defendant to comply strictly with the terms of this Consent Judgment shall be grounds for the Cabinet to seek enforcement of this Judgment in the Franklin Circuit Court and to pursue any other appropriate administrative or judicial action under KRS Chapter 224 and the regulations promulgated pursuant thereto. The Defendant reserves its right to be heard in defense of any such enforcement proceedings.

20. Each separate provision, condition, or duty contained in this Consent Judgment may be the basis for an enforcement action for a separate violation and penalty pursuant to KRS Chapter 224 upon failure to comply with the terms of this Consent Judgment.

21. The Cabinet does not, by its consent to the entry of this Consent Judgment, warrant or aver in any manner that the Defendant's complete compliance with the Consent Judgment will result in compliance with provisions of KRS Chapter 224, and the regulations promulgated pursuant thereto. Notwithstanding the Cabinet's review of any plans formulated, pursuant to this Consent Judgment, the Defendant shall remain solely responsible for compliance with the terms of KRS Chapter 224 and the regulations promulgated pursuant thereto, this Consent Judgment and any pertinent requirements.

22. The provisions of this Consent Judgment shall apply to and be binding upon the Defendant. The acts or omissions of the Defendant's Officers, Directors, Agents, and/or employees shall not excuse performance of any provision of this Consent Judgment. The Cabinet reserves the right to seek enforcement of this Consent Judgment against the successors and assigns of the Defendant, and the Defendant reserves its defense thereto. The Defendant shall give notice of this Consent Judgment to any purchaser, lessee, or successor in interest to its surface mining operations prior to the transfer of ownership and/or operation of any of its now

existing facilities occurring prior to termination of this Consent Judgment, shall notify the Cabinet that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer of the KPDES permit. Whether or not a transfer takes place, the Defendant shall remain fully responsible for the payment of all civil penalties identified and performance of all remedial measures in this Consent Judgment.

23. This Consent Judgment does not limit or affect the rights of Defendant or of the Cabinet against any third parties, not parties to this Consent Judgment, nor does it limit the rights of third parties, not parties to this Consent Judgment, against Defendant, except as otherwise provided by law.

24. This Consent Judgment shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Judgment.

25. The Cabinet agrees to allow the performance of the above-listed remedial measures and payment of the above-listed civil penalties by the Defendant to satisfy the Defendant's obligations to the Cabinet generated by the violations described in the Complaint.

26. This Consent Judgment shall be of no force and effect unless and until it is entered by the Franklin Circuit Court as evidenced by signatures thereon. If this Consent Judgment contains any date by which the Defendant is required to take action under Section V, and the Franklin Circuit Court enters them Consent Judgment after that date, then the Defendant is nonetheless obligated to perform the action by the date contained in this Consent Judgment.

## VII. COSTS

27. The Parties shall bear their own costs of this action, including attorneys fees, except that Plaintiffs shall be entitled to collect the costs (including attorneys fees) incurred in

any action necessary to enforce this Consent Judgment with respect to payments required under paragraph 6.

28. The Effective Date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

#### **IX. RETENTION OF JURISDICTION**

29. The Court shall retain exclusive jurisdiction over this case until termination of this Consent Judgment, for the purpose of resolving disputes arising under this Judgment or entering orders modifying this Judgment, pursuant to Section X (Modification), or effectuating or enforcing compliance with the terms of this Judgment.

#### **X. MODIFICATION**

30. The terms of this Consent Judgment may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Judgment, it shall be effective only upon approval by the Franklin Circuit Court.

#### **XI. TERMINATION**

31. After Defendants have completed performance of their obligations required by this Judgment, including payments of civil penalties and completion of remedial measures, Defendant may submit to the Cabinet a written request for termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

32. If the Cabinet agrees that the Judgment may be terminated, the Cabinet shall file a motion or a joint stipulation for termination of the Judgment. If the Cabinet does not agree that the Judgment may be terminated, the matter may be presented to the Franklin Circuit Court to decide the termination issue.

## **XII. INTEGRATION**

33. This Consent Judgment constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Judgment and supersedes all prior agreements and understandings, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Judgment or the settlement it represents, nor shall it be used in construing the terms of this Judgment.

## **XIII. FINAL JUDGMENT**

34. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a final judgment between the Cabinet and Defendant.

The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment. This Consent Judgment is dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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Judge Franklin Circuit Court

Civil Action No. 10-CI-01967

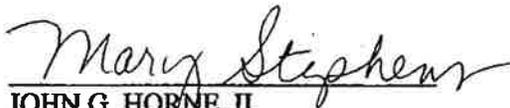
AGREED TO BY:



LEONARD K. PETERS, SECRETARY  
KENTUCKY ENERGY AND  
ENVIRONMENT CABINET  
12<sup>th</sup> Floor Capital Plaza Tower  
500 Mero Street  
Frankfort, KY 40601

12/3/10  
Date

HAVE SEEN:

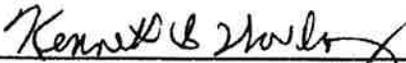


JOHN G. HORNE, II  
MARY STEPHENS  
JOSH NACEY  
Energy and Environment Cabinet  
Environmental Protection Legal Division  
300 Fair Oaks Lane  
Frankfort KY 40601  
Telephone: (502) 564-2150 ext 136  
Fax: (502) 564-4245

12-3-10  
Date

COUNSEL FOR PLAINTIFF

**AGREED TO BY:**

  
\_\_\_\_\_  
KENNETH G. WOODRING, PRESIDENT  
Frasure Creek Mining, LLC  
4978 Teays Valley Road  
Scott Depot, WV 25560

12/3/10  
\_\_\_\_\_  
Date

**HAVE SEEN:**

  
\_\_\_\_\_  
JOHN C. BENDER  
MARTIN J. CUNNINGHAM, III  
Greenebaum Doll & McDonald PLLC  
300 West Vine Street, Suite 1100  
Lexington, KY 40507  
Phone: (859) 231-8500  
Facsimile: (859) 255-2742  
COUNSEL FOR DEFENDANT  
FRASURE CREEK MINING, LLC

12/3/10  
\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing **CONSENT JUDGMENT** was mailed, postage prepaid, to the following this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

KENNETH G. WOODRING, PRESIDENT  
Frasure Creek Mining, LLC  
4978 Teays Valley Road  
Scott Depot, WV 25560

JOHN C. BENDER  
MARTIN J. CUNNINGHAM, III  
Greenebaum Doll & McDonald PLLC  
300 West Vine Street, Suite 1100  
Lexington, KY 40507

JOHN HORNE  
Energy and Environment Cabinet  
Environmental Protection Legal Division  
300 Fair Oaks Lane  
Frankfort, Kentucky 40601

Mary Stephens  
Josh Nacey  
Energy and Environment Cabinet  
Environmental Protection Legal Division  
200 Fair Oaks Lane, First Floor  
Frankfort, Kentucky 40601

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Clerk, Franklin Circuit Court

**APPENDIX A**  
**FRASURE CREEK MINING, LLC**

Facility Name	County	KPDES #	DNR #
Frasure Creek Mining, LLC- West Lick Mine	Perry	KYG041006	860-0470
Frasure Creek Mining, LLC- West Lick Mine	Perry	KYG040569	860-0469
Frasure Creek Mining, LLC	Floyd	KY0078271	836-8061
Frasure Creek Mining, LLC	Floyd	KYG044819	836-8062
Frasure Creek Mining, LLC	Perry	KYG042947	860-0466
Frasure Creek Mining, LLC- West Lick Mine	Perry	KYG040567	860-0468
Frasure Creek Mining, LLC	Knott	KY0101761	860-9014
Frasure Creek Mining, LLC	Pike	KYG045749	898-0810
Frasure Creek Mining, LLC	Pike	KYG046049	898-0811
Frasure Creek Mining, LLC	Perry	KYG044971	897-0499
Frasure Creek Mining, LLC- Tiptop Surface Mine	Perry	KYG045676	897-0503
Frasure Creek Mining, LLC	Magoffin	KYG046282	877-0182
Frasure Creek Mining, LLC	Floyd	KYG046237	836-0341
Frasure Creek Mining, LLC	Floyd	KYG045764	836-0345
Frasure Creek Mining, LLC	Floyd	KYG045996	836-0346
Frasure Creek Mining, LLC	Floyd	KYG040512	836-5526
Frasure Creek Mining, LLC	Floyd	KYG045752	836-5524
Frasure Creek Mining, LLC	Floyd	KYG045718	836-5525
Frasure Creek Mining, LLC	Floyd	KYG041754	836-5531
Frasure Creek Mining, LLC	Floyd	KYG045938	836-0347
Frasure Creek Mining, LLC	Floyd	KY0108111	836-0326
Frasure Creek Mining, LLC	Floyd	KYG046409	836-0343
Frasure Creek Mining, LLC	Perry	KYG041311	897-8049
Frasure Creek Mining, LLC	Breathitt	KYG045943	813-0328
Frasure Creek Mining, LLC	Perry	KY0046981	897-8048
Frasure Creek Mining, LLC	Perry	KYG040609	897-0492
Frasure Creek Mining, LLC	Perry	KYG043231	897-0495
Frasure Creek Mining, LLC	Pike	KYG044054	897-0496
Frasure Creek Mining, LLC	Perry	KYG044510	897-0497
Frasure Creek Mining, LLC	Floyd	KYG044922	877-0177
Frasure Creek Mining, LLC	Magoffin	KYG046469	877-0184
Frasure Creek Mining, LLC	Magoffin	KYG046314	877-0200
Frasure Creek Mining, LLC- Banner Prep Plant	Floyd	KY0053546	836-8066
Frasure Creek Mining LLC	Perry	KYG040112	860-0467
Frasure Creek Mining LLC	Perry	KYG040075	813-0321
Frasure Creek Mining LLC	Perry	KYG042269	897-0494
Frasure Creek Mining LLC	Floyd	KYG046408	836-0342
Frasure Creek Mining LLC	Perry	KYG040644	897-0493
Frasure Creek Mining LLC	Floyd	KYG045931	836-7011
Frasure Creek Mining LLC	Floyd	not assigned	836-7014

Frasure Creek Mining LLC	Perry	KYG046569	897-0500
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