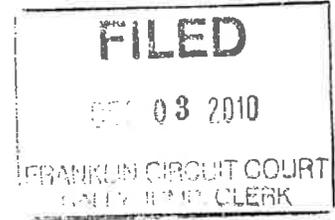


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
Civil Action No. 10-CI-01969
DIVISION 2



COMMONWEALTH OF KENTUCKY,
ENERGY AND ENVIRONMENT CABINET,

PLAINTIFF,

v.

CONSENT JUDGMENT

ICG HAZARD, LLC
ICG KNOTT COUNTY, LLC
ICG EAST KENTUCKY, LLC and
POWELL MOUNTAIN ENERGY, LLC

DEFENDANTS

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 KRS Chapter 224, the Clean Water Act (CWA), 33 U.S.C.1251 et seq. and regulations promulgated pursuant thereto.

B. WHEREAS, ICG Hazard, LLC and ICG Knott County, LLC, ICG East Kentucky, LLC and Powell Mountain Energy, LLC (collectively hereinafter, Defendants) own and operate surface coal mining operations in Eastern Kentucky pursuant to surface mining 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 Defendants' 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 Defendants that are the subject of this Consent Judgment are set forth in Appendix A to this Consent Judgment.

C. WHEREAS, on or about October 7, 2010 the Cabinet was served with a Notice of Intent to Sue 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 ICG Knott and ICG Hazard at several of their surface mining facilities. Thereafter, the Cabinet conducted inspections and investigations to confirm whether ICG Knott and ICG Hazard had violated their 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 Notice of Intent to Sue. In addition to alleged violations set out in the Notice of Intent to Sue for certain ICG Knott and ICG Hazard permits, the Cabinet’s investigations revealed additional alleged violations at the identified facilities as well as alleged violations of KPDES permits at other ICG surface coal mining operations.

D. WHEREAS, as set forth in the Cabinet’s Complaint, the Cabinet has determined that Defendants have violated terms and conditions of their 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); and 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). The Cabinet has also determined that some discharge monitoring reports (“DMRs”) submitted under ICG’s KPDES permits were not properly signed and certified in accordance with 401 KAR 5:065 Section 2(1), as in 40 CFR 122.22(b) and 40 CFR 122.41(k). The Cabinet thereby alleged that Defendants 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 their facilities during that period. The Cabinet also charges that Defendants failed to maintain records of monitoring information as required by 401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(j), for a period of three (3) years from the date of monitoring.

E. WHEREAS, as set forth in the Complaint, a review of Defendants’ Discharge Monitoring Reports (“DMRs”) reveals that, on numerous occasions, Defendants have included incorrect and erroneous data and other incorrect information in DMRs due to transcription errors and other mistakes, and to 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 Defendants. Transcription errors that indicated noncompliance were not explained on the DMRs as required by 401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(l)(7). The Cabinet has also determined that Defendants’ third party contractors have failed to 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).

F. WHEREAS, the Cabinet has filed a Complaint in this action contemporaneously with this Consent Judgment, alleging that Defendants are civilly liable for violations of Kentucky

Revised Statutes (KRS), related Kentucky Administrative Regulations (KAR), and the Clean Water Act as set forth in Notices of Violation (NOVs) submitted as Exhibits 1 through 46 of the Complaint.

G. WHEREAS, on November 29, 2010 the Cabinet issued Notices of Violation (“NOVs”) to ICG 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(a)
- (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(j)(4)
- (5) 401 KAR 5:065 Section 2(1), as in 40 C.F.R. 122.41(k)
- (6) 401 KAR 5:065 Section 2(1), as in 40 C.F.R. 122.41(k)(2)
- (7) 401 KAR 5:065 Section 2(1), as in 40 C.F.R. 122.41(l)(4)
- (8) 401 KAR 5:065 Section 2(1)
- (9) KRS 224.70-110

The NOVs are submitted as Exhibits 1 to 46 to the Complaint and are incorporated as if fully set out in the Complaint.

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

I. WHEREAS, pursuant to this Consent Judgment, with respect to the matters set forth in the Complaint, as generally described above, Defendants 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 ICG 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.

J. WHEREAS, Defendants do not admit any facts or liability to the Cabinet arising out of the transactions or occurrences alleged in the Complaint but agree to the entry of this Consent Judgment to resolve the violations alleged.

K. 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 Defendants conduct business in the Commonwealth of Kentucky. For purposes of this Consent Judgment, or any action to enforce this Judgment, Defendants consent 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 Defendants, and any successors, assigns or other entities or persons otherwise bound by law.

3. Defendants shall provide a copy of this Consent Judgment to all contractors that are retained to provide services related to KPDES permit monitoring and analysis. Defendants 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, Defendants 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 statute or such 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 or Defendants shall mean ICG Hazard, ICG Knott, ICG East, and Powell Mountain.

f. KPDES permit shall mean any individual or general Kentucky Pollutant Discharge Elimination System permit issued to ICG Hazard and ICG Knott, ICG East or Powell Mountain for wastewater discharges from their coal mining operations, including those KPDES permits listed in Appendix A to this Consent Judgment.

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 ICG Hazard, ICG Knott, ICG East and Powell Mountain

j. Plaintiff shall mean the Cabinet.

k. State shall mean the Commonwealth of Kentucky.

l. ICG shall mean ICG Hazard and ICG Knott, ICG East and Powell Mountain.

IV. CIVIL PENALTIES

6. Defendants shall be jointly and severally liable and shall pay an aggregate civil penalty to the Cabinet of three hundred fifty thousand dollars (\$350,000). Defendants shall pay the civil penalty as set forth below:

a. Civil penalty payments shall be made by check or money order 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 two (2) installments of one hundred seventy five thousand dollars (\$175,000.00) each, as follows:

(1) The first installment payment of one hundred seventy-five thousand dollars (\$175,000) shall be paid within thirty (30) business days after the Consent Judgment is entered as a final order by the Franklin Circuit Court.

(2) The subsequent civil penalty installment payment of one hundred seventy five thousand dollars (\$175,000) shall be made no later than one calendar year following the payment of the initial penalty payment.

c. If Defendants fail 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.

d. Civil penalty payments shall be made by check or money order made payable to “The Kentucky State Treasurer” and sent to the Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, Kentucky 40601.

V. REMEDIAL MEASURES

7. Each Defendant 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 by January 15, 2011 and shall contain, or identify:

a. The procedures and protocols the Defendant shall implement to ensure compliance with the monitoring, testing, recordkeeping, and DMR reporting requirements of the law and of its KPDES permits. The permittee shall 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 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 ICG or its contractor(s).

i) Each Defendant shall verify that its contract laboratory has developed and is implementing a Standard Operating Procedures (SOP) plan and is using approved methodologies for all analysis; and

ii) Each Defendant shall verify that its contract 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 such Defendant'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.

e. Protocols to be used by Defendants 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 ICG'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). If a Defendant becomes aware that it has submitted incorrect information in a DMR, it shall promptly submit corrected facts or information to the Cabinet as required by 401 KAR 5:065 Section 2(1), as in 40 CFR 122.41(l)(8).

8. Each Defendant shall submit with its DMRs for the 4th quarter of 2010 the associated chain(s) of custody, bench sheets and analytical data for December, 2010. Each Defendant shall submit with its DMRs for the 1st quarter of 2011 the associated chain(s) of custody, bench sheets and analytical data.

9. Each Defendant 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 40 CFR 122.22(b) that will be responsible for certifying DMRs, beginning with the Fourth Quarter 2010 DMRs required under its respective KPDES permits. If a Defendant elects to provide the Cabinet with a written authorization of one or more duly authorized representatives, the authorization must be made consistent with 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).

10. Defendants shall at all times properly operate and maintain their facilities and systems of treatment. Defendants shall comply with effluent limitations established under their KPDES permits.

VI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

11. 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 regarding 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.

12. Except for those matters resolved through this Consent Judgment, this Judgment shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to the Defendants. The Defendants reserve their rights to defenses thereto. Defendants 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.

13. 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 Defendants 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. Defendants further specifically reserve their right to raise any defense that may be available to them in any civil litigation regarding matters addressed herein involving any individual, person, or entity that is not party to this Consent Judgment.

14. This Consent Judgment is without prejudice to the rights of the Cabinet against Defendants with respect to all matters other than those expressly specified above. The Defendants waive their right to any hearing on the matters set forth herein. However, failure by the Defendants 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 Defendants reserve their right to be heard in defense of any such enforcement proceedings.

15. 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.

16. The Cabinet does not, by its consent to the entry of this Consent Judgment, warrant or aver in any manner that the Defendants' 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 Defendants 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.

17. The provisions of this Consent Judgment shall apply to and be binding upon the Defendants. The acts or omissions of the Defendants' 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 Defendants, and the Defendants reserve their defense thereto. The Defendants 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 Defendants shall remain fully responsible for the payment of all civil penalties and performance of all remedial measures identified in this Consent Judgment.

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

19. 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.

20. 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 Defendants' obligations to the Cabinet generated by the violations described in the Complaint or the NOV's.

21. 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 Defendants are required to take any action under Section V and the Franklin Circuit Court enters the Consent Judgment after that date, then the Defendants are nonetheless obligated to perform the action by the date contained in this Consent Judgment.

VII. COSTS

22. 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.

VIII. EFFECTIVE DATE

23. 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

24. 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

25. 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

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

27. 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

28. 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

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

10-CI-01868

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.

Judge, Franklin Circuit Court

10-CI-01868

AGREED TO BY:

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

Date

Roger Nicholson
ROGER NICHOLSON
for ICG HAZARD, LLC
as its Assistant Secretary

12/3/10
Date

Roger Nicholson
ROGER NICHOLSON
for POWELL MOUNTAIN ENERGY, LLC
as its Vice President and Secretary

12/3/10
Date

Christina Brumley
CHRISTINA BRUMLEY
for ICG KNOTT COUNTY, LLC
as its Secretary

12/3/10
Date

Christina Brumley
CHRISTINA BRUMLEY
for ICG EAST KENTUCKY, LLC
as its Secretary

12/3/10
Date

10-CI-01868

HAVE SEEN AND AGREED TO ENTRY BY:

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

Date

COUNSEL FOR PLAINTIFF



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175 East Main Street, Suite 500
Lexington, KY 40507

Date 12/3/10

COUNSEL FOR DEFENDANTS
ICG Hazard, LLC,
ICG Knott County, LLC,
ICG East Kentucky, LLC, and
Powell Mountain Energy, LLC

Civil Action No. 10-CI-01969

AGREED TO BY:


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

12/3/10
Date

HAVE SEEN:


JOHN G. HORNE, II
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Frankfort KY 40601
Telephone: (502) 564-2150 ext 136
Fax: (502) 564-4245

12-3-10
Date

COUNSEL FOR PLAINTIFF

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.

ICG Hazard, LLC,
ICG Knott County, LLC,
ICG East Kentucky, LLC, and
Powell Mountain Energy, LLC
Care of counsel

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Office of General Counsel
200 Fair Oaks Lane, First Floor
Frankfort, Kentucky 40601

Clerk, Franklin Circuit Court

APPENDIX A

ICG Knott Co, LLC

Facility Name	County	KPDES #	DNR #
ICG Knott County, LLC	Knott	KYG045805	860-5271
ICG Knott Co LLC	Knott	KYG043345	860-0414
ICG Knott Co LLC	Knott	KYG042589	860-5267
ICG Knott Co LLC	Knott	KYG042754	860-5268
Knott Co Mining Co	Knott	KYG043631	860-5269
ICG Knott Co LLC	Knott	KYG046395	860-5312
ICG Knott Co LLC	Knott	KY0094285	860-8012
ICG Knott Co LLC	Knott	KYG045000	860-9011
ICG Knott Co LLC	Knott	KYG045265	860-0441
ICG Knott Co LLC	Knott	not assigned	860-5270
ICG Knott Co LLC	Knott	KYG046392	860-5277
ICG Knott Co LLC	Knott	KYG045360	860-5279
ICG Knott Co LLC	Knott	KYG044728	860-5296
ICG Knott Co LLC	Knott	KYG044982	860-5297
ICG Knott Co LLC	Knott	KYG045973	860-5298
ICG Knott Co LLC	Knott	KYG046374	860-5324
ICG Knott Co LLC	Knott	KYG041041	860-8014

ICG East Kentucky, LLC

Facility Name	County	KPDES #	DNR #
ICG East KY LLC	Martin	KYG046183	880-0179
ICG East KY LLC	Pike	KYG045173	898-0735
ICG East KY LLC	Pike	KYG045336	898-0737
ICG East KY LLC	Pike	KYG043050	898-8155
ICG East KY LLC	Pike	KYG045176	898-7073

ICG Hazard, LLC

Facility Name	County	KPDES #	DNR #
ICG Hazard, LLC	Knott	KYG046357	860-0454
ICG Hazard, LLC	Knott	KYG045985	860-0463
ICG Hazard, LLC	Breathitt	KYG044802	813-0293
ICG Hazard, LLC	Breathitt	KYG046093	813-0272
ICG Hazard, LLC	Breathitt	KYG041123	813-0291
ICG Hazard, LLC	Breathitt	KYG046108	813-0294
ICG Hazard, LLC	Breathitt	KYG043595	813-0296
ICG Hazard, LLC	Breathitt	KYG046206	813-0315
ICG Hazard, LLC	Breathitt	KYG044403	813-5025
ICG Hazard, LLC	Breathitt	KYG044753	813-5026
ICG Hazard, LLC	Breathitt	KYG044019	813-7026
ICG Hazard LLC-Flint Ridge Plant	Breathitt	KY0023086	813-8018
ICG Hazard, LLC	Breathitt	KYG043598	813-8019
ICG Hazard, LLC	Knott	KYG040737	860-0445
ICG Hazard, LLC	Leslie	KYG043540	866-0281
ICG Hazard, LLC	Leslie	KYG045542	866-0295
ICG Hazard, LLC	Leslie	KYG041742	866-5146

ICG Hazard, LLC	Perry	KYG046154	897-0446
ICG Hazard, LLC	Perry	KY0106852	897-0448
ICG Hazard, LLC	Breathitt	KYG044107	897-0454
ICG Hazard, LLC	Perry	KYG045377	897-0455
ICG Hazard, LLC	Perry	KYG043989	897-0456
ICG Hazard, LLC	Perry	KYG040722	897-0482
ICG Hazard, LLC	Perry	KYG044268	897-0483
ICG Hazard, LLC	Perry	KYG046274	897-0486
ICG Hazard, LLC	Perry	KYG042314	897-0543
ICG Hazard, LLC	Perry	KYG044931	897-5118
ICG Hazard LLC-Kentucky River Loading	Perry	KYG043089	897-8040
ICG Hazard, LLC	Perry	KYG042693	897-8041
ICG Hazard LLC-Krypton Tipple	Perry	KYG042598	897-8043
ICG Hazard LLC	Breathitt	KYG043740	813-7033
ICG Hazard LLC	Leslie	KYG044235	866-5137
ICG Hazard LLC	Leslie	KYG041819	866-9010
ICG Hazard LLC	Breathitt	KYG046436	813-0323
ICG Hazard LLC	Perry	KYG046401	813-0331
ICG Hazard LLC	Knott	KYG046437	860-0429
ICG Hazard LLC	Knott	KYG045818	860-0462
ICG Hazard LLC	Perry	KYG045906	860-0471
ICG Hazard LLC	Perry	KYG046120	860-7009
ICG Hazard LLC	Knott	no permit	860-7011
ICG Hazard LLC	Perry	KYG042111	897-7012
ICG Hazard LLC	Perry	KYG046023	860-0416

Powell Mountain Energy LLC

Facility Name	County	KPDES #	DNR #
Powell Mountain Energy LLC	Harlan	KYG045535	848-5475
Powell Mountain Energy LLC	Harlan	KYG042008	848-5473
Powell Mountain Energy LLC	Harlan	KYG041488	848-5472
Powell Mountain Energy LLC	Harlan	KYG041694	848-5471
Powell Mountain Energy LLC	Harlan	KYG040167	848-5470
Powell Mountain Energy LLC	Harlan	no permit	848-5457
Powell Mountain Energy LLC	Harlan	KYG045436	848-5474
Powell Mountain Energy LLC	Harlan	KYG044246	848-5476