



Commonwealth of Kentucky Energy and Environment Cabinet

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Kentucky Energy and Environment Cabinet files for appellate court relief of Circuit Court ruling in ICG, Frasure Creek Mining case *Action seeks to have previous ruling voided*

FRANKFORT, Ky. – (Feb. 21, 2011) – The Kentucky Energy and Environment Cabinet (EEC) today filed a petition for a writ of prohibition and mandamus and a motion for intermediate relief with the Kentucky Court of Appeals asking the court to compel Franklin Circuit Judge Phillip Shepherd to act within the constraints of the law with regards to the petitions filed to intervene by several environmental groups in two cases involving consent judgments between the Cabinet and ICG, Inc. and its four subsidiaries and Frasure Creek Mining, LLC. The agency and the companies had filed those cases with Franklin Circuit Court Dec. 2, 2010. The cases, filed in different divisions of the court, were consolidated by Judge Shepherd in his division.

The environmental groups filed to intervene in the consolidated cases and that request was granted by Judge Shepherd on Feb. 11, 2011. In that ruling, Judge Shepherd found that because the environmental groups had brought water sampling and reporting issues from the coal companies to the Cabinet's attention, they have a legal right to intervene in the cases and challenge the agreements reached by the Cabinet and the companies.

In seeking the writ of mandamus, attorneys for EEC state that the court erred in allowing the request for intervention because the environmental groups do not have a right to have their claims heard in state court. The cabinet argues that the federal Clean Water Act, which allows the filing of Notices of Intent (NOI) to file suits against the companies or state agencies, limits jurisdiction on groups' claims to federal court. Further, the cabinet contends that state law provides no right for the group to challenge the settlement agreements.

The Cabinet filed a separate request for intermediate relief on the grounds that the Cabinet will suffer immediate and irreparable injury before a hearing may be held on this Petition.

The Petition states that the Feb. 11 order by Judge Shepherd “imposes obligations on the Cabinet commencing as early as February 21. This Order is clearly erroneous and, given the deadlines under the Order, the Cabinet has no adequate remedy at law to prevent the immediate negative impact of Respondent’s Order on the Cabinet’s ability to timely and efficiently implement its long-standing, comprehensive program for the investigation, enforcement, and resolution of violations of Kentucky’s environmental laws.”

“The order by Judge Shepherd, if allowed to stand, will have a chilling effect across all areas of the Executive Branch of state government in that the ability to negotiate settlements with respect to violations of state environmental standards will be severely limited because there would be no certainty by the parties that the issues would be final and completed,” said EEC Secretary Len Peters.

More formal legal arguments would be heard at a later date should the Court of Appeals grant the petition for the writ.

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