

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL
COALITION, et al.,**

Plaintiffs,

v.

**Civil Action No. 3:07-cv-00413
Hon. Robert C. Chambers, Jr.**

APOGEE COAL COMPANY, LLC

Defendant.

APOGEE COAL COMPANY'S SIXTH STATUS REPORT

As directed by the Court's Order of December 15, 2008, (Doc. 132), Apogee Coal Company submits this sixth status report detailing its continued efforts to achieve compliance with applicable selenium limits under NPDES Permit WV1013599.

This report continues to chronicle Apogee's efforts. Attached as Exhibit 1 through 3 are affidavits from Raymond Lovett, Ph.D., John Sawyer Ph.D., and an affidavit and monitoring data from Jim Constant, Manager of Engineering at Apogee Coal. Also, supplied Exhibit 4 is a six part report prepared by the consulting engineering firm of CH2M HILL that was first identified in an affidavit from Timothy Harrison, P.E. submitted as part of the Fourth Status Report (Doc. 127-2, pages 8-12). Four of six parts of the report were received on or before January 23, with the final two parts delivered on Monday morning, January 26, 2009.

Dr. Lovett in Exhibit 1 describes his continued work at the Titanic outfall, describing the installation of fifteen additional tanks during the week of January 12. These will continue the use of the ZVI iron wool technology which, based on the installation and testing to

date, appears to be working as designed and expected. Dr. Lovett also describes the work that he expects to undertake in the month of February.

Dr. Sawyer of MATRIC in Exhibit 2 summarizes the progress of the ZVI foam project at the Mud Lick site through the end of January. ZVI foam is an improvement upon the “iron wool” application being used at Titanic which offers a solution to the need for numerous tanks in locations where large acreages of level ground may not exist. Therefore, it is considered very promising. His exhibit also includes available monitoring data from the pilot project from start up in December through January. In addition, Apogee contracted with MATRIC to proceed with a proposal to set up a pilot RO project which should be installed at a site at Apogee by the end of January.

The affidavit provided by Jim Constant updates the monitoring data for selenium at the Titanic site through January 28, 2009. Water at Titanic is diverted to a basin which guides it to the ZVI system which now consists of seven trains of three tanks. The test results for January report the selenium inflow values from the settling basin, and the reduction in selenium after it passes through the three tank treatment system. The measurement at the NPDES outflow monitoring point is also reported.

The CH2M HILL report in Exhibit 4 describes the engineering issues and challenges that accompany any system of treatment that will be installed at Apogee. Among the issues identified in the report are the form of selenium, commonly referred to as selenate, present in the discharge at the mine site, the fluctuating and highly variable flow volumes present at each of the three outlets, and the different treatment systems that have been used to treat selenium at different settings.

“The Court [has] refused to require Apogee to purchase any specific treatment technology and did not impose interim benchmarks upon the Defendant. . . . Having given Apogee the time and flexibility to obtain consulting assistance, review and investigate alternative treatment options, and choose its own course for compliance, the Court will hold Apogee responsible for any failure to achieve full success with the installation and compliance deadlines.” (Doc. 129, pp. 2-3). The affidavits and verifications described above, combined with the previous affidavits submitted to the Court with its prior status reports, demonstrate that Apogee is attempting to comply in good faith with the Court’s Orders. It is relying upon the expertise of its consultants to devise systems of treatment that will perform reliably. Above all, Apogee is taking defined measures to meet the timeline imposed by the Court for compliance with applicable selenium limits under NPDES Permit WV1013599.

Unless the Court directs otherwise, Apogee will submit its next status report to the Court on March 4, 2009.

Respectfully submitted,

APOGEE COAL COMPANY, LLC

/s/ Blair M. Gardner
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**APOGEE COAL COMPANY, LLC and
HOBET MINING COMPANY, LLC**

Defendants.

CERTIFICATE OF SERVICE

I, Blair M. Gardner, hereby certify that the foregoing *Apogee Coal Company's Sixth Status Report* was electronically filed with the Clerk of the Court on February 2, 2009, using the CM/ECF system, which will send notification of such filing to the following:

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