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Coal Company Unlawfully Polluted West Virginia Water, Federal Judge Rules

BY **EMILY ATKIN**  APRIL 28, 2014 AT 1:51 PM UPDATED: APRIL 28, 2014 AT 5:09 PM



This photo shows a coal slurry impoundment in Harrison County, W. Va., similar to the one a federal judge recently found was contributing excess selenium pollution into state waters.

CREDIT: AP PHOTO/W.VA. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Coal company Alpha Natural Resources violated its state-issued pollution permit by allowing toxic amounts of selenium to seep into West Virginia waters, a federal judge ruled Thursday, the latest event in the state's ongoing coal-driven water pollution saga.

In a decision first reported by the Charleston Gazette, U.S. District Judge Robert C. Chambers said that Alpha subsidiary Marfork Coal also violated state water quality law by allowing excess selenium from its Brushy Fork coal impoundment — one of the biggest coal waste ponds in the country — to discharge into the Brushy Fork stream in

2012. The stream is not a source of drinking water for humans, but is a source for plants and wildlife, according to the complaint.

The ruling was a win for the four environmental groups that brought the lawsuit — The Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy Inc., Coal River Mountain Watch Inc., and the Sierra Club — who had argued that Alpha violated its state-issued permits despite the fact that the permit did not specifically limit selenium pollution. Judge Chambers agreed that those permits exist to prohibit water quality violations in general, and confirmed the credibility of water samples showing selenium levels in excess of West Virginia’s official limit.

“[Alpha] was in violation of West Virginia’s water quality standards — and, consequently, its own permits — during both October 2012 and December 2012,” Judge Chambers wrote.

In a statement provided to ThinkProgress, Alpha spokesman Steve Higginbottom said the company would appeal the ruling and believes that the sludge pond “remains in the bounds of its permit.” Higginbottom said Alpha believes that state legislation passed in 2012 — called Senate Bill 615 — should protect them from the lawsuit. That bill says that, as long as coal companies meet discharge limits set in their state-issued permit, they are in compliance with state water pollution laws.

Selenium, a mineral by-product of mountain-top removal coal mining, is a naturally occurring metal, and small amounts are allowed to be present in drinking water. However, too much selenium can cause hair or fingernail loss, numbness, and circulation problems in humans, according to the EPA.

The major issue with selenium pollution is its ability to bioaccumulate, as a 2009 Wake Forest University study on selenium’s impacts noted. This means the metal’s presence increases within living things as they go up the food chain — a problem that usually starts with waterborne contamination, the study said. In fish, high concentrations can cause spinal deformities and scoliosis, eventually leading to death. And it is not an easy problem to solve.

“Once an aquatic habitat is polluted by selenium, timely cleanup is difficult if not impossible,” the study said. “If waterborne selenium concentrations are not reduced, reproductive toxicity will spiral out of control and fish populations will collapse.”

Alpha also attempted to dismiss the case by arguing that it was not releasing excess

amounts of selenium, noting that the expert the plaintiffs used to take water samples — Meghan Betcher of environmental consulting firm Downstream Strategies — had been “confused” about the streams she was supposed to be testing, and had used flawed data to make her conclusions. Attorneys for Alpha corroborated that statement with samples from its own expert, Jimmy Bennett of Research Environmental & Industrial Consultants Inc., who found significantly less pollution in the samples he took.

Judge Chambers dismissed that argument, calling it an “attempt to attack Ms. Betcher’s credibility and her precision as a sampler.” Instead, Judge Chambers compiled evidence to the contrary, claiming that Bennett’s samples were the ones that were improperly conducted.

“After reviewing all of the evidence in this case, the Court finds that Ms. Betcher’s December 12, 2012, data from the Brushy Fork and Little Marsh Fork samples is accurate and that Mr. Bennett’s like data is inaccurate,” he wrote.

Water pollution in West Virginia — a problem largely driven by the state’s coal industry — is nothing new, but was brought back into the public eye in January when 10,000 gallons of a coal production chemical mixture called Crude MCHM spilled into the Elk River and tainted the water supply for 300,000 people.

The effects of the Crude MCHM spill are ongoing, and lawsuits over it have already sprung. The lawsuit against Alpha is over selenium pollution that occurred in 2012, and court rulings are just now starting to come in. A ruling on what damages Alpha should be expected to incur is yet to arrive.

UPDATE This story has been updated to clarify sourcing

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