

COMMONWEALTH OF KENTUCKY
BELL CIRCUIT COURT
CIVIL ACTION NO. 11-CI _____

KIMBERLY ADKINS, WENDELL ADKINS, VICKIE ALLEN, WAYNE ALLEN, IVA LEE BARNETTE, BRENDA BOLINGER, JACKIE BOLINGER, DEBBIE BOLT, JEFF BOLT, VIOLA CARROLL, DEBRA CHADWELL, ROBERT CHADWELL, CAROLYN DAVIS, JOANNA DUNCAN, RAYMOND DUNCAN, TOMMIE SUE ELLIS, WOODROW ELLIS, JAMES GOLDEN, DANNY GOODMAN, KIMBERLY GOODMAN, LARRY HUFF, ROSIE HUFF, TRINA IDOL, NORMA JEFFERY, CINDY KNACK, PATRICIA LAWSON, STANLEY LAWSON, LARRY MCCULLOUGH, ANGELA MIRACLE, BETTY MULLINS, JIM MULLINS, RON NORTH, EDITH PARSONS, JACK PARSONS, DONNA POWERS, EUGENE ROESCH, VANESSA ROESCH, DEBORAH ROGERS, ETHEL ROOP, JOHN SMITH, SHEILA SMITH, JAMES TENNYSON, ELIZABETH TENNYSON, RALPH TENNYSON, CHARLES WEBB, MARY WEBB, AND NOBLE YORK,

PLAINTIFFS

VS.

COMPLAINT

APPOLO FUELS INC.
P.O. Box 1727
Middlesboro, KY 40965

and

BELL COUNTY COAL CORP.
901 East Byrd Street
Suite 1600
Richmond, VA 23219

and

STRATA MINING
3802 W. Cumberland Ave.
P.O. Box 962
Middlesboro, KY 40965

and

TWIN STAR COAL COMPANY

P.O. Box 81
Cranks, KY 40820

and

C & L HIGHWALL MINING PARTNERSHIP
1005 N. 19th Street
Middlesboro, KY 40965

and

LC & C ENERGY INC.
1403 Cumberland Avenue, Suite D
Middlesboro, KY 40965

and

T & T ENERGY INC.
P.O Box 1433
London, KY 40743

and

STONY FORK MINING INC.
P.O. Box 626
Middlesboro, KY 40965

and

TACKETT CREEK MINING INC.
111 Mill Creek Road
Pathfork, KY 40863

and

Unknown Agents of Defendants Appolo Fuels Inc.,
who participated in the decision not to control off-
permit disturbances at mining site "Refuse Area No. 1"
and

Unknown Agents of Defendants Appolo Fuels Inc., who participated in the decision not to control off-permit disturbances and/or failed to inspect or properly maintain backfill areas, highwall areas, drainage and/or sediment control structures at mining site "Highnite Highwall"

and

Unknown Agents of Defendants Appolo Fuels Inc., who failed to inspect or properly maintain drainage and/or sediment control structures at mining site "Bennetts Fork Mine"

and

Unknown Agents of Defendants Appolo Fuels Inc. and/or C & L Highwall Mining Partnership, who participated in the decision not to control off-permit disturbances and/or establish contemporaneous reclamation and/or failed to inspect or properly maintain drainage and/or sediment control structures at mining site "Deep Mine"

and

Unknown Agents of Defendants Appolo Fuels Inc. and/or C & L Highwall Mining Partnership and/or LC&C Energy Inc., who participated in the decision not to control off-permit disturbances and/or establish contemporaneous reclamation and/or failed to inspect or properly maintain drainage and/or sediment control structures at mining site "Poplar Lick Mine"

and

Unknown Agents of Defendants Appolo Fuels Inc. and/or C & L Highwall Mining Partnership and/or LC&C Energy Inc. and/or Stony Fork Mining Inc., who participated in the decision not to control off-permit disturbances and/or establish

adequate erosion prevention measures and/or failed to inspect or properly maintain drainage and/or sediment control structures at mining site "Stray's Mine"

and

Unknown Agents of Defendants Appolo Fuels Inc. and/or T & T Energy Inc. and/or Twin Star Coal Co. and/or Tackett Creek Mining Inc., who participated in the decision not to control mining activities that caused off-permit hydrological and land disturbances and/or failed to inspect or properly maintain drainage and/or sediment control structures at mining site "807-0396"

and

Unknown Agents of Defendants Bell County Coal Corporation, who failed to inspect or properly maintain spoil disposal areas at mining site "Jellico Underground Mine No. 1"

and

Unknown Agents of Defendants Bell County Coal Corporation, who participated in the decision not to control mining activities that caused off-permit hydrological and land disturbances and/or failed to inspect or properly maintain drainage and/or sediment control structures at mining site "Poplar Lick Mine 4 Portal"

and

Unknown Agents of Defendants Strata Mining Inc., who participated in the decision not to control off-permit substandard water discharges and/or failed to inspect or properly maintain sediment control structures at mining site "Mine No. 5"

and

Unknown Agents of Defendants Strata Mining Inc.
and/or LC & C Energy Inc., who participated in the
decision not to control mining activities that caused
off-permit hydrological and land disturbances and/or
failed to inspect or properly maintain sediment and/or
drainage control systems at mining site “807-0374”

DEFENDANTS

Serve: Appolo Fuels, Inc.
Agent: Gary Asher
West Winchester Ave. Exten.
Middlesboro, KY 40965

Bell County Coal Corporation
CT Corporation System
306 West Main Street
Suite 512
Frankfort, KY 40601

Strata Mining
Agent: Amy Brooke Robinson
3082 West Cumberland Ave.
P.O. Box 962
Middlesboro, KY 40965

Twin Star Coal Company
Agent: Ronnie Jackson
900 Highway 568
P.O. Box 81
Cranks, KY 40820

C & L Highwall Mining Partnership
P.O. Box 97
Middlesboro, KY 40965
LC & C Energy Inc.
Agent: Terry L. Lee
1005 North 19th Street
Middlesboro, KY 40965

T & T Energy Inc.
Agent: Amy C. Hamilton
1012 Sherwood Drive
London, KY 40741

Stony Fork Mining Inc.
Agent: Michael E. Bailey
1014 North 12th Street
Suite 2
Middlesboro, KY 40965

Tackett Creek Mining Inc.
Agent: Debra L. Anderson
111 Mill Creek Road
Pathfork, KY 40863

COMPLAINT

Come the plaintiffs, by counsel, and for their complaint state as follows:

Nature of Action

Residents of the Yellow Creek, Stony Fork Creek and Stevenson Creek watersheds in Bell County, Kentucky, seek damages and injunctive relief for injuries they suffered due to a catastrophic flood that occurred on June 20, 2011. Plaintiffs assert that the flooding they experienced on that date was a direct consequence of Defendants' ultra-hazardous activities in the watershed. Defendants' mining and related operations failed to prevent damage to the hydrologic balance of areas surrounding these operations, exacerbating the rain event and serving individually and together as a significant contributing factor to the flooding. Additionally, and in the alternative, Plaintiffs allege that the flooding was the result of Defendants' mining operations that were negligent, reckless, and willfully non-compliant with Kentucky law and administrative regulations.

Parties

1. Defendant Appolo Fuels Inc. (“Appolo Fuels”) is a Kentucky corporation with its principal office at P.O. Box 1727 Middlesboro, Kentucky 40965.

a. At all times relevant to this action, Defendant conducted coal mining and related operations at the following sites:

1.) A site that Defendant designates as “Refuse Area No. 1,” Permit No. 807-9000, located at or around 36°36’6”N 83°45’13”W and in the Yellow Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

2.) A site that Defendant designates as “Highnite Highwall,” Permit No. 807-0305, located at or around 36°35’59”N 83°46’3”W and in the Yellow Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

3.) A site that Defendant designates as “Bennetts Fork Mine,” Permit No. 807-0263, located at or around 36°35’49”N 83°45’27”W and in the Yellow Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

4.) A site that Defendant designates as “Deep Mine,” Permit No. 807-5109, located at or around 36°35’36”N 83°46’41”W and in the Yellow Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

5.) A site that Defendant designates as “Poplar Lick Mine,” Permit No. 807-0332, located at or around 36°36’52”N 83°46’55”W and in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

6.) A site that Defendant designates as “Stray’s Mine,” Permit No. 807-0378, located at or around 36°36’52”N 83°46’55”W and in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

7.) A site that Defendant designates as Permit No. “807-0396,” located at or around 36°36’43”N 83°49’29”W and in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

b. Appolo Fuel’s registered agent for service in Kentucky is Gary Asher at West Winchester Ave. Exten., Middlesboro, Kentucky 40965, according to the records of the Kentucky Secretary of State at the time of this filing.

2. Defendant Bell County Coal Corporation (“Bell County Coal”) is a foreign corporation with its principal office at 901 East Byrd Street Suite 1600, Richmond Virginia 23219.

a. At all times relevant to this action, Defendant conducted coal mining and related operations at the following sites:

1.) A site that Defendant designates as “Jellico Underground Mine No. 1,” Permit No. 807-5223, located at or around 36°35’45”N 83°45’54”W and in the Yellow Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

2.) A site that Defendant designates as “Poplar Lick Mine 4 Portal,” Permit No. 807-5025, located at or around 36°36’42”N 83°49’28”W and in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

b. Bell County Coal’s registered agent for service in Kentucky is C T Corporation System at 306 W. Main Street, Suite 512, Frankfort Kentucky 40601, according to the records of the Kentucky Secretary of State at the time of this filing.

3. Defendant Strata Mining, Inc. (“Strata Mining”) is a Kentucky corporation with its principal office at 3082 W. Cumberland Avenue, P.O. Box 962, Middlesboro Kentucky 40965.

a. At all times relevant to this action, Defendant conducted coal mining and related operations at the following sites:

1.) A site that Defendant designates as “Mine No. 5,” Permit No. 807-0277, located at or around 36°36’45”N 83°47’53”W and in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra

hazardous under Kentucky law.

2.) A site that Defendant designates as Permit No. "807-0374", located at or around 36°38'12"N 83°45'39"W and in the Stevenson Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

b. Strata Mining's registered agent for service in Kentucky is Amy Brooke Robinson at the principal office location listed above, according to the records of the Kentucky Secretary of State at the time of this filing.

4. Defendant Twin Star Coal Company ("Twin Star Coal") is foreign corporation with its principal office at P.O. Box 81, Cranks Kentucky 40820.

a. At all times relevant to this action, Defendant conducted coal mining and related operations as an Operator at the following sites:

1.) At a site Defendant designates as Permit No. "807-0396," located at or around 36°36'43"N 83 °49'29"W in the Stony Fork watershed of Bell County, Kentucky. Some of these operations were extra-hazardous under Kentucky law.

2.) At a site Defendant designates as "Poplar Lick Mine 4 Portal," Permit No. 807-5025 located at or around 36°36'42"N 83°49'28"W in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra-hazardous under Kentucky law.

b. Twin Star Coal's registered agent for service in Kentucky is Ronnie Jackson at 900 Highway 568, P.O. Box 81, Cranks Kentucky 40820, according to the records of the Kentucky Secretary of State at the time of this filing.

5. Defendant C & L Highwall Mining Partnership ("C & L Highwall Mining") is a Kentucky RUPA partnership with its principal office at 1005 N. 19th Street, Middlesboro Kentucky 40965.

a. At all times relevant to this action, Defendant conducted coal mining and related operations as an Operator at the following sites:

1.) A site that Defendant designates as "Deep Mine," Permit No. 807-

5109 located at or around 36°35'36"N 83°46'41"W and in the Yellow Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under Kentucky law.

2.) At a site Defendant designates as "Poplar Lick Mine," Permit No. 807-0332, located at or around 36°36'52"N 83°46'55"W and in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra-hazardous under Kentucky law.

3.) At a site Defendant designates as "Stray's Mine," Permit No. 807-0378, located at or around 36°36'52"N 83°46'55"W and in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra-hazardous under Kentucky law.

b. C & L Highwall Mining's registered agent for service in Kentucky is P.O. Box 97, Middlesboro Kentucky 40965, according to the records of the Kentucky Secretary of State at the time of this filing.

6. Defendant LC & C Energy Inc. ("LC & C Energy") is a Kentucky corporation with its principal office at 1403 Cumberland Avenue, Suite D, Middlesboro Kentucky 40965.

a. At all times relevant to this action, Defendant conducted coal mining and related operations as an Operator at the following sites:

1.) At a site Defendant designates as "Poplar Lick Mine," Permit No. 807-0332, located at or around 36°36'52"N 83°46'55"W and in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra-hazardous under Kentucky law.

2.) At a site Defendant designates as "Stray's Mine," Permit No. 807-0378, located at or around 36°36'52"N 83°46'55"W and in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra-hazardous under Kentucky law.

3.) At a site that Defendant designates as Permit No. "807-0374", located at or around 36°38'12"N 83°45'39"W and in the Stevenson Creek watershed of Bell County, Kentucky. Some of these operations were extra hazardous under

Kentucky law.

b. LC & C Energy's registered agent for service in Kentucky is Terry L. Lee at 1005 N. 19th Street, Middlesboro Kentucky 40965, according to the records of the Kentucky Secretary of State at the time of this filing.

7. T & T Energy Inc. ("T & T Energy") is a Kentucky limited liability company with its principal office at P.O. Box 1433, London Kentucky 40743.

a. At all times relevant to this action, Defendant conducted coal mining and related operations as an Operator at a site Defendant designates as Permit No. "807-0396," located at or around 36°36'43"N 83 °49'29"W in the Stony Fork watershed of Bell County, Kentucky. Some of these operations were extra-hazardous under Kentucky law.

b. T & T Energy's registered agent for service in Kentucky is Amy C. Hamilton at 1012 Sherwood Drive, London Kentucky 40741, according to the records of the Kentucky Secretary of State at the time of this filing.

8. Defendant Stony Fork Mining Inc. ("Stony Fork Mining") is a Kentucky corporation with its principal office at P.O. Box 626, Middlesboro Kentucky 40965.

a. At all times relevant to this action, Defendant conducted coal mining and related operations as an Operator at a site Defendant designates as "Stray's Mine," Permit No. 807-0378, located at or around 36°36'52"N 83°46'55"W and in the Stony Fork Creek watershed of Bell County, Kentucky. Some of these operations were extra-hazardous under Kentucky law.

b. Stony Fork Mining's registered agent for service in Kentucky is Michael E. Bailey at 1014 N. 12th Street, Suite 2, Middlesboro Kentucky 40965, according to the records of the Kentucky Secretary of State at the time of this filing.

9. Defendant Tackett Creek Mining Inc. ("Tackett Creek Mining") is a foreign corporation with its principal office at 111 Mill Creek Road, Pathfork Kentucky 40863.

a. At all times relevant to this action, Defendant conducted coal mining and related operations as an Operator at a site Defendant designates as Permit No. "807-0396," located at or around 36°36'43"N 83 °49'29"W in the Stony Fork watershed of

Bell County, Kentucky. Some of these operations were extra-hazardous under Kentucky law.

b. Tackett Creek Mining's registered agent for service in Kentucky is Debra L. Anderson at 111 Mill Creek Road, Pathfork Kentucky 40863, according to the records of the Kentucky Secretary of State at the time of this filing.

10. Unknown agents of Appolo Fuels named as Defendants who had decision-making and supervisory authority over operations at Refuse Area No. 1 and are individually liable for the consequences of improper exercise of that authority.

11. Unknown agents of Appolo Fuels named as Defendants who had decision-making and supervisory authority over operations at Highnite Highwall and are individually liable for the consequences of improper exercise of that authority.

12. Unknown agents of Appolo Fuels named as Defendants who had decision-making and supervisory authority over operations at Bennetts Fork Mine and are individually liable for the consequences of improper exercise of that authority.

13. Unknown agents of Appolo Fuels and/or C & L Highwall Mining named as Defendants who had decision-making and supervisory authority over operations at Deep Mine and are individually liable for the consequences of improper exercise of that authority.

14. Unknown agents of Appolo Fuels and/or LC & C Energy and/or C & L Highwall Mining named as Defendants who had decision-making and supervisory authority over operations at Poplar Lick Mine and are individually liable for the consequences of improper exercise of that authority.

15. Unknown agents of Appolo Fuels and/or C & L Highwall Mining and/or Stony Fork Mining named as Defendants who had decision-making and supervisory authority over operations at Stray's Mine and are individually liable for the consequences of improper exercise of that authority.

16. Unknown agents of Appolo Fuels and/or T & T Energy and/or Twin Star Coal and/or Tackett Creek Mining named as Defendants who had decision-making and supervisory authority over operations at 807-0396 and are individually liable for the consequences of improper exercise of that authority.

17. Unknown agents of Bell County Coal named as Defendants who had decision-making and supervisory authority over operations at Jellico Underground Mine No. 1 and are individually liable for the consequences of improper exercise of that authority.

18. Unknown agents of Bell County Coal and/or Twin Star Coal named as Defendants who had decision-making and supervisory authority over operations at Poplar Lick Mine 4 Portal and are individually liable for the consequences of improper exercise of that authority.

19. Unknown agents of Strata Mining named as Defendants who had decision-making and supervisory authority over operations at Mine No. 5 and are individually liable for the consequences of improper exercise of that authority.

20. Unknown Agents of Strata Mining and/or LC & C Energy Inc. named as Defendants who had decision-making and supervisory authority over operations at 807-0374 and are individually liable for the consequences of improper exercise of that authority.

21. All Plaintiffs are residents of Bell County, Kentucky.

a. Plaintiffs Wendell Adkins and Kimberly Adkins, husband and wife, resided at 300 South 24th Street, Middlesboro Kentucky 40965, at all times relevant to their claims.

b. Plaintiffs Wayne Allen and Vickie Allen, husband and wife, resided at 13 Blakeman Drive, Middlesboro Kentucky 40965, at all times relevant to their claims.

c. Plaintiff Iva Lee Barnette resided at 422 Wilderness Road, Middlesboro Kentucky 40965, at all times relevant to her claim.

d. Plaintiffs Jackie Bolinger and Brenda Bolinger, husband and wife, resided at 14 Blakeman Drive, Middlesboro Kentucky 40965, at all times relevant to their claims.

e. Plaintiffs Jeff Bolt and Debbie Bolt, husband and wife, resided at 41 Duncan Lane, Middlesboro Kentucky 40965, at all times relevant to their claims.

f. Plaintiff Viola Carroll resided at 196 Turner Lane, Middlesboro Kentucky 40965, at all times relevant to her claims.

g. Plaintiffs Robert Chadwell and Debra Chadwell, husband and wife, resided at 512 Wildwood Road, Middlesboro Kentucky 40965, at all times relevant to their claims.

h. Plaintiff Carolyn Davis resided at 8 Blakeman Drive, Middlesboro Kentucky

40965, at all times relevant to her claim.

i. Plaintiffs Raymond Duncan and Joanna Duncan, husband and wife, resided at 111 Blakeman Drive, Middlesboro Kentucky 40965, at all times relevant to their claims.

j. Plaintiffs Woodrow Ellis and Tommie Sue Ellis, husband and wife, resided at 210 Welch Lane, Middlesboro Kentucky 40965, at all times relevant to their claims.

k. Plaintiff James Golden resided at 196 Turner Lane, Middlesboro Kentucky 40965, at all times relevant to his claims.

l. Plaintiffs Danny Goodman and Kimberly Goodman, husband and wife, resided at 11 Blakeman Drive, Middlesboro Kentucky 40965, at all times relevant to their claims.

m. Plaintiffs Larry Huff and Rosie Huff resided at 12 Blakeman Drive, Middlesboro Kentucky 40965, at all times relevant to their claims.

n. Plaintiff Trina Idol resided at 196 Turner Lane, Middlesboro Kentucky 40965, at all times relevant to her claims.

o. Plaintiff Norma Jeffrey resided at 2908 Old Pineville Pike, Middlesboro Kentucky 40965, at all times relevant to her claims.

p. Plaintiff Cindy Knack resided at 1329 Old Wilson Lane, Middlesboro Kentucky 40965, at all times relevant to her claims.

q. Plaintiffs Stanley Lawson and Patricia Lawson, husband and wife, resided at 103 Blakeman Drive, Middlesboro Kentucky 40965, at all times relevant to their claims.

r. Plaintiff Larry McCullough resided at 313 New Wilson Lane, Middlesboro Kentucky 40965, at all times relevant to his claims.

s. Plaintiff Angela Miracle resided at Lot 14 Midulom Trailer Park, Middlesboro Kentucky 40965, at all times relevant to her claims.

t. Plaintiffs Jim Mullins and Betty Mullins resided at 145 Lower Gibson Lane, Middlesboro Kentucky 40965, at all times relevant to their claims.

u. Plaintiffs Edith Parsons and Jack Parsons resided at 47 Dunlap Hollow Road, Middlesboro Kentucky 40965, at all times relevant to their claims.

v. Plaintiff Donna Powers resided at 182 Turner Lane, Middlesboro Kentucky 40965, at all times relevant to her claims..

w. Plaintiffs Eugene Roesch and Vanessa Roesch, husband and wife, resided at 16 Duncan Lane, Middlesboro Kentucky 40965, at all times relevant to their claims.

x. Plaintiff Deborah Rogers resided at 172 Turner Lane, Middlesboro Kentucky 40965, at all times relevant to her claims.

y. Plaintiff Ethel Roop resided at 2913 Old Pineville Pike, Middlesboro Kentucky 40965, at all times relevant to her claims.

z. Plaintiff Debora Smith resided at 3008 Highway 441, Middlesboro Kentucky 40965, at all times relevant to her claims.

aa. Plaintiffs John Smith and Sheila Smith, husband and wife, resided at 10 Blakeman Drive, Middlesboro Kentucky 40965, at all times relevant to their claims.

bb. Plaintiff Robert Smith resided at 2910 Old Pineville Pike, Middlesboro Kentucky 40965, at all times relevant to his claims.

cc. Plaintiffs James Tennyson and Elizabeth Tennyson, husband and wife, resided at 178 Lower Gibson Lane, Middlesboro Kentucky 40965, at all times relevant to their claims.

dd. Plaintiffs Ralph Tennyson resided at 186 Lower Gibson Lane, Middlesboro Kentucky 40965, at all times relevant to his claims.

ee. Plaintiffs Charles Webb and Mary Webb, husband and wife, resided at 9 Blakeman Drive, Middlesboro Kentucky 40965, at all times relevant to their claims.

ff. Plaintiff Noble York resided at 18 Hurst Road, Middlesboro Kentucky 40965, at all times relevant to his claims.

Factual Allegations

22. In the period leading up to and including June 20, 2011, Defendants all conducted mining and related operations at various sites in the Yellow Creek, Stony Fork and Stevenson Creek watersheds in Bell County, Kentucky under various permits issued by Kentucky's Energy and Environment Cabinet Division of Mine Reclamation and Enforcement ("DMRE"). These

permits include, but are not limited to, numbers 807-9000, 807-0305, 807-0263, 807-5223, 807-5109, 807-0332, 807-0378, 807-0396, 807-0277, 807-5025, 8070374.

23. In the period leading up to and including June 20, 2011, Defendants mining and related activities at various sites in the Yellow Creek, Stony Fork and Stevenson Creek watersheds created conditions that exacerbated the flooding event on June 20, 2011. Defendants' various activities, including the failure to establish permanent, diverse and effective vegetative cover to prevent excess run-off in reclamation areas, disturbed the hydrologic balance of the Yellow Creek, Stony Fork and Stevenson Creek watershed areas, increasing the quantity and velocity of flow and effecting the quality of water within the watersheds.

24. During the sixteen (16) month period prior to and including June 2011, inspectors from the Kentucky DMRE issued at least seventeen (17) citations, which included twenty-nine (29) individual violations, to the Defendant Appolo Fuels and/or C & L Highwall Mining and/or LC & C Energy and/or Stony Fork Mining and/or T & T Energy and/or Twin Star Coal and/or Tackett Creek Mining for permits operating in the Yellow Creek and Stony Fork watersheds of Bell County, Kentucky. The most relevant violations to the claims of this complaint include, but are not limited to:

a. For the Refuse Area No. 1 site, Permit # 807-9000, the DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1231) on April 18, 2011, for creating a disturbance outside the permit caused by an off-permit slide above haul road "A" adjacent to increment #15 of the permit. This disturbance was not abated at the time of the June 20, 2011 flooding nor has it been abated at the time of the filing of this complaint.

b. For the Highnite Highwall mine, Permit # 807-0305, the DMRE issued four (4) Notices of Non-Compliance between 2009 and June 20, 2011. Three of these citations are or may be related to the claims in this complaint:

1.) The DMRE issued a Notice of Non-Compliance (NC# 23-1552) on March 23, 2009 to Defendants for creating a disturbance outside the permit by allowing spoil, rock and debris to move downslope off the permit. NC #23-1552 also included a sediment control violation for Defendants' failure to maintain an embankment on pond #14. According to the DMRE, these violations were abated

before 2011, but establish a consistent pattern of non-compliance.

2.) The DMRE issued a Notice of Non-Compliance (NC # 23-0236) to Defendants on this permit on October 27, 2009 for failure to maintain sediment control by allowing excessive unpermitted levels of sedimentation in ponds #18 and #26 along increments #5 and #6. According to the DMRE, these violations were abated before 2011, but establish a consistent pattern of non-compliance.

3.) The DMRE issued a Notice of Non-Compliance (NC# 23-1170) on April 18, 2011 to Defendants for failing to backfill and grade the highwall area along increment #3 according to the permit plan, and for a number of disturbances off the permit, including off-permit slides below the permit between ponds #16 and #17 adjacent to increment #5, and between ponds #22 and #23 adjacent to increment #6, and off-permit slides above the permit between ponds #26 and #27 adjacent to increment #6 and #7. According to the DMRE, these violations were unabated at the time of the June 20 2011 flooding in Middlesboro, Kentucky.

c. . For the Deep Mine, Permit # 807-5109, the DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1160) on November 23, 2010, for failure to follow contemporaneous reclamation regulatory requirements by failing to return the deep mine face-up area in Shade Branch to the approximate original contour. This violation was not abated at the time of the June 20, 2011 flooding nor has it been abated at the time of the filing of this complaint.

d. For the Poplar Lick Mine, Permit # 807-0332, the DMRE issued Defendants nine (9) Notices of Non-Compliance with nineteen (19) separate violations between 2009 and June 20, 2011. Four of those notices and thirteen (13) of the cited violations are or may be relevant to the claims in this complaint.

1.) The DMRE issued a Notice of Non-Compliance (NC# 23-0921) to Defendants on February 3, 2009 for two separate violations. The Defendants had caused disturbances outside the permit by creating slides below and adjacent to pond #7 on the downslope area of the permit, and slides in Rock Lick Branch on increment #5 of the permit adjacent to increments #6 and #11. The Defendants also violated sediment control standards by failing to maintain sediment pond #7

according to approved plans, and permitting slides to develop on the out-slope face of pond #7 on increment #5 of the permit. According to the DMRE, these violations were abated before 2011, but establish a consistent pattern of non-compliance.

2.) The DMRE issued a Notice of Non-Compliance (NC# 23-1847) to Defendants on June 4, 2009 for 8 separate violations. According to the DMRE, these violations were abated by 2011, but establish a consistent pattern of non-compliance. These violations include but are not limited to:

a.) failure to pass all surface water through approved sediment ponds, failure to adequately establish diversions between ponds, and creating large areas throughout the permit that did not drain into ponds;

b.) allowing erosion to occur on areas of the permit where rills and gullies had formed more than 9 inches deep;

c.) failure to follow the approved backfilling and grading plan, creating slopes below the road that were excessively steep, and failing to properly windrow trees on the outside of the permit;

d.) failure to comply with contemporaneous reclamation requirements by creating an area of wall more than 7300 feet long that had not been completely reclaimed;

e.) disturbances outside the permit created by several off-permit slides that had occurred below the permit area;

f.) failure to construct proper storage areas, creating storage areas that were not draining properly and had uncompleted side drains, and failure to properly dispose of trees by placing spoil on top of windrowed trees;

g.) failure to maintain sediment ponds #8, #14, and #20, allowing excessive sediment levels in each of these ponds, and failure to undertake any construction to create pond #4 after mining in the area near the proposed pond.

3.) The DMRE issued a Notice of Non-Compliance (NC# 23-0077) to Defendants on December 10, 2009 for off-permit disturbances caused by slides that had occurred below the permit area adjacent to increment #10. According to the DMRE, this violation was abated before 2011, but establishes a consistent pattern of non-compliance.

4.) The DMRE issued a Notice of Non-Compliance (NC# 23-0375) to Defendants on January 27, 2010 for three separate violations. According to the DMRE, the first two violations were abated by 2011, but establish a consistent pattern of non-compliance. The third violation was unabated at the time of the June 20, 2011 flooding in Middlesboro, Kentucky and has still not been abated at the time of the filing of this complaint. These violations include:

a.) failure to maintain undisturbed natural berms beginning at the elevation of the mined coal seam along increments #3,4,5,6,7,8,9 and 10;

b.) disturbances outside the permit caused by slides below pond #9 and down-slope of increment #6 of the permit;

c.) mining activity causing adverse impacts on the hydrologic balance of the areas outside the permit below pond #9 and down-slope of increment #6 of the permit.

25. During the sixteen (16) month period prior to and including June 2011, inspectors from the Kentucky DMRE issued at least nine (9) citations, which included thirteen (13) individual violations, to the Defendant Bell County Coal operations operating in the Yellow Creek and Stony Fork watersheds of Bell County, Kentucky. The most relevant violations to the claims of this complaint include, but are not limited to:

a. For the Jellico Underground Mine No. 1, Permit # 807-5223, the DMRE issued Defendants seven (7) Notices of Non-Compliance with eleven (11) separate violations between 2009 and June 20, 2011. Five of those notices and nine (9) of the cited violations are or may be relevant to the claims in this complaint.

1.) The DMRE issued a Notice of Non-Compliance (NC# 23-1549) to Defendants on February 4, 2009 for failure to construct and certify sediment

ponds #1 and #2 prior to creating disturbances in those watersheds, and for failure to provide any sediment control for the entire face-up area of the permit. According to the DMRE, these violations were abated before 2011, but establish a consistent pattern of non-compliance.

2.) The DMRE issued a Notice of Non-Compliance (NC# 23-1556) to Defendants on April 20, 2009 for failure to maintain sediment structures #1 and #2 according to the approved permit plan, and for failure to place material in the spoil storage area in a way that would prevent mass movement during construction of the area. According to the DMRE, these violations were abated before 2011, but establish a consistent pattern of non-compliance.

3.) The DMRE issued a Notice of Non-Compliance (NC# 23-1562) to Defendants on June 26, 2009 for placing excess material in an unpermitted area of the mine site. According to the DMRE, this violation was abated before 2011, but establishes a consistent pattern of non-compliance.

4.) The DMRE issued a Notice of Non-Compliance (NC# 23-0840) to Defendants on May 5, 2010 for failure follow the approved permit plan in maintaining diversions to pond #2A on the spoil storage area #1 in increment #1 of the permit. According to the DMRE, this violation was abated before 2011, but establishes a consistent pattern of non-compliance.

5.) The DMRE issued a Notice of Non-Compliance (NC# 23-1270) to Defendants on June 26, 2010 for 4 separate violations. According to the DMRE, these violations were abated by 2011, but establish a consistent pattern of non-compliance. These violations include but not limited to:

a.) exceeding effluent limitations by allowing the discharge of substandard water from sediment structure #2;

b.) failure to pass all surface drainage from permitted area through approved sediment control structures and allowing surface water to travel across the highway and enter Bennetts Fork Creek;

c.) creating sediment levels that exceeded permitted elevations in

sediment structure #2.

b. For the Poplar Lick Mine 4 Portal, Permit # 807-5025, the DMRE issued Defendants two (2) Notices of Non-Compliance with two (2) separate violations between 2009 and June 20, 2011. One of these notices and one cited violation is relevant to the claims in this complaint.

1.) The DMRE issued a Notice of Non-Compliance (NC# 23-1550) to Defendants on February 24, 2009 for failure to construct and certify a sediment pond prior to creating disturbances in the watershed of pond #10. According to the DMRE, this violation was abated before 2011, but establishes a consistent pattern of non-compliance.

26. In the months immediately following the June 20 2011 flood, inspectors from the Kentucky DMRE issued at least seven (7) citations, which included twenty-two (22) individual violations, to the Defendant Appolo Fuels and/or C & L Highwall Mining and/or LC & C Energy and/or Stony Fork Mining and/or T & T Energy and/or Twin Star Coal and/or Tackett Creek Mining for permits operating in the Yellow Creek and Stony Fork watersheds of Bell County, Kentucky. These citations were for conditions that may have existed prior to and/or during the time of the June 20, 2011 flooding event and may have thus exacerbated the flooding in the Yellow Creek and Stony Fork watershed areas of Bell County, Kentucky. The most relevant violations to the claims of this complaint include, but are not limited to:

a. For the Bennetts Fork Mine, Permit # 807-0263, the DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1564) on June 30, 2011, for failure to maintain haul roads by allowing debris and sediment to clog haul road culvert C-5.

b. For the Deep Mine, Permit # 807-5109, the DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1642) on September 26, 2011 for two separate violations. These violations include:

1.) Drainage plan failures, including:

a.) failure to implement a drainage plan for diversion DD-8, allowing drainage to be routed through an unapproved location and failing to construct diversion DD-8 according to the approved design;

b.) failure to construct diversion DD-9 according to the approved design

2.) Creating a disturbance outside the permitted area below Road #1 adjacent to increment 1.

c. For the Poplar Lick Mine, Permit # 807-0332, the DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1633) on July 7, 2011 for six (6) separate violations. These violations include:

1.) Sediment control failures, including:

a.) failure to maintain the emergency spillway and splash pad of sediment structure #12 in increment #7;

b.) sediment levels that exceed approved elevation in sediments structure ponds #1 and #3 in increment #4, sediment structure pond #6 in increment #3, sediment structure pond #8 in increment #6, and sediment structure pond #20 in increment #1;

c.) failure to stabilize the embankment on sediment structure pond #20 in increment #1

2.) Failure to maintain proper drainage systems for haul roads “P”, “G”, “I”, “M” in increment #1 and haul road “AA” in increment #20;

3.) Failure to maintain diversions P2-DD2 in increment #4, P2-DD2 in increment #3, P12-DD2 in increment #7, and failure to maintain a freshwater diversion ditch in increment #14;

4.) Creating off-permit disturbances through:

a.) allowing materials outside the permitted area below pond #25 in increment #19 and between ponds #1 and #1A in increment #4;

b.) off-permit slides occurring below and just past pond #8 in increment #6;

5.) Failure to stabilize rills and gullies between pond #1 and pond #3 of the backfill area in increment #4, and allowing a slumpage to occur above pond

#1 in increment #4 of the backfill area and between pond #17 (in increment #9) and pond #19 (in increment #10);

6.) Failure to complete revegetation of the permitted area according to the permitted revegetation plan between pond #1 and pond #3 in increment #4, and along sections from pond #16 (in increment #9) to the end of the permit past pond #25 (in increment #19).

d. For the Stray's Mine, Permit # 807-0378, the DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1631) on July 7, 2011 five (5) separate violations. These violations include:

1.) Failure to provide vegetation cover to control erosion on backfill areas in increment #3;

2.) Sediment control violations including:

a.) Failure to maintain sediment structure pond #25 in increment #1 according to approved plans by allowing the spillway to become blocked with debris and failing to maintain an eroding splash pad;

b.) Creating a disturbance in the drainage area above pond # 2 and pond # 8 in increments #3 and 9 without certifying sediment structure ponds #2 and 8 in increment #1;

3.) Creating a disturbance outside the permit by allowing materials outside the permitted area below Road "J" in increment #3 and below culvert C-2 in increment #9;

4.) Conducting mining activities on an unbonded increment

5.) Failure to backfill and grade properly, including:

a.) Failure to stabilize rills and gullies at spoil storage area #2 in increment #4;

b.) Creating a slide below pond #20 in increment #4;

c.) Allowing a slumpage to occur in the backfill area above hollow fill #1 in increment #3

e. For Permit # 807-0396, the DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1358) on June 27, 2011 five (5) separate violations. These violations include:

1.) Mining activities having an adverse impact on the hydrologic balance of an area outside of the permit adjacent to increment #1;

2.) Sediment levels exceeding approved elevations in sediments structures #1, #5, #13, #16, #24 and #25;

3.) Failure to stabilize drainage areas throughout the backfill to prevent erosion above pond #26 in increment 6, above pond #40 in increment 4, above pond #16 in increment 1, above ponds #9 and #10 in increment 3, and above pond #7 in increment 2;

4.) Creating a disturbance outside of the permit through off-permit slides below the permit adjacent to increment 1 below pond #23 and adjacent to increment 18 below Road "J";

5.) Failure to pass all surface drainage from permitted area through approved sediment control in multiple locations in increments 9, 10 and 11

27. In the months immediately following the June 20 2011 flood, inspectors from the Kentucky DMRE issued at least three (3) citations, which included six (6) individual violations, to the Defendant Bell County Coal and/or Twin Star Coal for permits operating in the Yellow Creek and Stony Fork watersheds of Bell County, Kentucky. These citations were for conditions that may have existed prior to and/or during the time of the June 20, 2011 flooding event and may have thus exacerbated the flooding in the Yellow Creek and Stony Fork watershed areas of Bell County, Kentucky. The most relevant violations to the claims of this complaint include, but are not limited to:

a. For the Jellico Underground Mine No. 1, Permit # 807-5223, the DMRE issued Defendants a Notice of Non-Compliance on two separate occasions within four weeks of the June 20, 2011 flooding event in Middlesboro, Kentucky.

1.) The DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1357) on June 29, 2011 for a violation related to excess spoil disposal related to

the occurrence of a slumpage in spoil storage area #1;

2.) The DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1403) on July 16, 2011 for violations of water quality and effluent limitations related to the discharge of substandard water from a sediment structure which exceeded effluent limitation requirements.

b. For the Poplar Lack Mine 4 Portal, Permit #807-5025, the DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1359) on July 5, 2011 for three (3) separate violations. These violations included:

1.) Mining activities adversely impacted the hydrologic balance of areas outside the permit downstream of pond #7;

2.) Failure to maintain diversion DD #4 below pond #7 in increment 1 according to the approved plan;

3.) Creating a disturbance outside the permit through an off-permit slide below the permit adjacent to increment 1.

28. In the months immediately following the June 20 2011 flood, inspectors from the Kentucky DMRE issued at least two (2) citations, which included four (4) individual violations, to the Defendant Strata Mining for permits operating in the Stony Fork and Stevenson Creek watersheds of Bell County, Kentucky. These citations were for conditions that may have existed prior to and/or during the time of the June 20, 2011 flooding event and may have thus exacerbated the flooding in the Stony Fork and Stevenson Creek watershed areas of Bell County, Kentucky. The most relevant violations to the claims of this complaint include, but are not limited to:

a. For the Mine No. 5, Permit #807-0277, the DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1636) on June 23, 2011 for three (3) separate violations. The violations include:

1.) Water quality and effluent limitation violations associated with allowing substandard water to discharge from a sediment structure, exceeding effluent limitation requirements;

2.) Failure to maintain on-bench sediment structure #17 in increment 25

according to approved plan, creating the washout of the principle and emergency spillways of sediment structure #17, discharging water from the sediment structure downstream along Rockhouse Branch.

b. For Permit # 807-0374, the DMRE issued Defendants a Notice of Non-Compliance (NC# 23-1650) on September 28, 2011 for creating an off-permit disturbance adjacent to pond #10.

Claims

29. Defendants' regulatory and statutory violations, some of which were documented in the Notices of Non-Compliance discussed above, injured all Plaintiffs. Plaintiffs adopt the allegations contained in these Notices and incorporate them here by reference. Defendants' conduct as documented in these Notices violated DMRE regulations established under the authority of Ky. Rev. Stat. Ann. § 350.101 et seq. In addition to the causal role these violations played in the claims below, Plaintiffs assert that each of these violations gives rise to an independent cause of action under Ky. Rev. Stat. Ann. § 446.070.

30. On June 20, 2011, Defendants Appolo Fuels and/or C & L Highwall Mining and/or LC & C Energy and/or Stony Fork Mining and/or T & T Energy and/or Twin Star Coal and/or Tackett Creek Mining committed trespass to real property belonging to some among the Plaintiffs through the instrumentality of Defendants' off-permit disturbances, landslides, failure to establish contemporaneous reclamation and/or failure to control drainage and/or sediment control systems.

31. On June 20, 2011, Defendants Bell County Coal committed trespass to real property belong to some among the Plaintiffs through the instrumentality of Defendants' off-permit disturbances, landslides, failure to maintain spoil storage and/or diversion areas, and/or the unpermitted discharge of water off the permit area.

32. On June 20, 2011, Defendants Strata Mining committed trespass to real property belong to some among the Plaintiffs through the instrumentality of Defendant's failure to maintain sediment control structures and/or unpermitted discharge of water off the permit site.

33. On June 20, 2011, Defendants Appolo Fuels and/or C & L Highwall Mining and/or LC & C Energy and/or Stony Fork Mining and/or T & T Energy and/or Twin Star Coal and/or

Tackett Creek Mining committed trespass to and/or conversion of various items of personal property belonging to each Plaintiff through the instrumentality of Defendants' off-permit disturbances, landslides, failure to establish contemporaneous reclamation and/or failure to control drainage and/or sediment control systems. Plaintiffs give special notice of the following losses while asserting that this list is not exhaustive.

34. On June 20, 2011, Defendants Bell County Coal committed trespass to and/or conversion of various items of personal property belonging to each Plaintiff through the instrumentality of Defendants' off-permit disturbances, landslides, failure to maintain spoil storage and/or diversion areas, and/or the unpermitted discharge of water off the permit area. Plaintiffs' list of losses is discussed in full above in this complaint.

35. On June 20, 2011, Defendants Strata Mining committed trespass to and/or conversion of various items of personal property belonging to each Plaintiff through the instrumentality of Defendant's failure to maintain sediment control structures and/or unpermitted discharge of water off the permit site. Plaintiffs' list of losses is discussed in full above in this complaint.

36. Defendants Appolo Fuels and/or C & L Highwall Mining and/or LC & C Energy and/or Stony Fork Mining and/or T & T Energy and/or Twin Star Coal and/or Tackett Creek, and/or Bell County Coal, and/or Strata Mining committed assault and/or battery against each Plaintiff through the instrumentality of their various violations and mining-related activities. Each Plaintiff experienced offensive contact with Defendants' draining and/or reasonable apprehension of imminent harmful or offensive contact.

37. Defendants have substantially interfered with Plaintiff's ability to use and enjoy their property, thus constituting a state law claim of nuisance.

38. Defendants each acted in reckless disregard of Plaintiffs' rights by their repeated and continuing violations of state regulations and accepted industry practices, or were grossly negligent in their conduct in their operations at Refuse Area No. 1, Highnite Highwall, Bennetts Fork Mine, Deep Mine, Poplar Lick Mine, Stray's Mine, 807-0396, Jellico Underground Mine No. 1, Poplar Lick Mine 4 Portal, and/or Mine No. 5

39. As a result of the Defendants' action previously described in this complaint, all of the plaintiffs to various extents suffered damages in excess of the jurisdictional limits of this Court.

These damages include: diminution in value of their residence, loss of personal property, damages to on-going businesses, lost earnings and profits, lost inventory, lost rental values, costs associated with replacement housing and transportation, and pain, suffering and humiliation.

WHEREFORE, Plaintiffs pray the Court grant them relief as follows:

1. Appointment of warning order attorneys for unknown defendants.
2. Judgment against each Defendant.
3. Compensation for damages referenced in this Complaint, including diminution of value to their lands, homes and businesses; destruction of, loss of, or damage to their homes and personal property; loss of contents; loss of earnings and other business-related damages; and all other reasonably foreseeable damages including the costs of alternative housing, cost of substitute transportation, and compensation for pain, suffering, and humiliation resulting from the massive interference with the Plaintiff's quality of life.
4. Punitive damages.
5. Injunctive relief ordering such remediation as may be necessary to reduce the likelihood of future flooding in the Yellow Creek and Stony Fork Creek watersheds. The relief sought includes but is not limited to removal of the sediment and other obstruction to the natural flow of Yellow Creek and Stony Fork Creek that were caused by Defendants' violations and state and industry standards.
6. Trial by jury
7. Any and all other relief the Court deems appropriate.

Respectfully Submitted,

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