

**CODE ENFORCEMENT AGENCY  
FAYETTE COUNTY, WEST VIRGINIA**

IN RE: Seminole West Virginia Mining }  
Complex, LLC, a West Virginia }  
Limited Liability Company, with } CEA Matter No. 2018-001  
respect to its operation of the }  
Eagle Deep Mine in Fayette }  
County, West Virginia }  
- Respondent }

**ORDER NO. 2018-001-8B-01**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
REQUIRING MONITORING, TESTING, ANALYSIS AND  
REPORTING  
ISSUED PURSUANT TO SECTION VIII(b) OF FAYETTE  
COUNTY ORDINANCE # 2018-001**

**NOTICES TO RESPONDENT:**

1. This Order is issued pursuant to provisions of the Fayette County, West Virginia Ordinance No. 2018-001 that became effective on August 17, 2018 and is entitled: Fayette County Comprehensive Public Nuisance Abatement Ordinance. You may review and download a complete and verified version of Fayette County Ordinance 2018-001 as enacted by the County Commission of Fayette County, West Virginia from the official website of Fayette County, West Virginia that may be found at the following web address: <https://fayettecounty.wv.gov/commission/Pages/Enacted-Ordinances.aspx>
2. The failure or refusal **without good cause** of any Respondent named in this Order that has been served with a copy of this Order as required by Section VIII(b)(1)(B) timely and competently to comply with any requirement of this Order may subject the Respondent to: **(i)** a compulsory judicial order issued in a civil enforcement action brought by the Fayette County Prosecuting Attorney in a court of competent jurisdiction pursuant to either or both Sections VIII(b)(2)(A) and XXII(a)(2) of Fayette County Ordinance # 2018-001; **(ii)** to the **award to the Fayette County Commission of its** litigation costs, including attorneys' fees and

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expenses, expert witness fees and expenses, and the fees and expenses of no more than one (1) non-testifying technical or scientific expert to assist the Fayette County Prosecuting Attorney in the preparation and prosecution of the action to secure enforcement of this Order; and (iii) judicial imposition of civil penalties of not less than Five thousand dollars (\$5,000), but not to exceed Ten thousand dollars (\$10,000), for **each day of noncompliance** pursuant to Section VIII(b)(2)(B) of Fayette County Ordinance # 2018-001.

3. Pursuant to Section VIII(f) of Fayette County Ordinance 2018-001, the Respondent to this Order may **only** seek any legal or equitable relief that would as a practical matter have the effect of invalidating, dismissing, staying, quashing (in whole or in part), or modifying all or any part of this Order in the course of one of the judicial proceedings described in Section VIII(f)(1), (2) or (3) of Fayette County Ordinance 2018-001.
4. **Pursuant to Section VIII(b)(1)(B) of Fayette County Ordinance 2018-001, the Respondent to this Order is entitled to, and may request at any time prior to thirty (30) day from the date it receives service of this Order, an informal opportunity to confer with an authorized representative of the Fayette County Code Enforcement Agency respecting the terms, conditions, and requirements of this Order.**

## **I. FINDINGS OF FACT:**

Based upon investigation and its review of available public records, the Fayette County Code Enforcement Agency (hereinafter: "FCCEA") makes the following Findings of Fact:

1. ***Facility Description:*** Respondent operates an underground mine and associated surface facilities in the Eagle seam of coal under permits U301906 and WV1022164. The site is located in western Fayette County near the Kanawha County line in the Valley District 2.03 miles southwest of Powellton at approximately 38°04'06" north latitude and 81°20'26" west longitude. The deep mine is located between Armstrong Creek (west) and Johnson Fork of Loop Creek (east). The receiving streams of permitted surface discharges are Unnamed Tributaries of/and Armstrong Creek, Unnamed Tributaries of/and Sycamore Branch, Unnamed Tributaries of/and Laurel Branch of Paint Creek and Paint Creek, all of which are tributaries of the Kanawha River.
2. ***Facility Processes and Waste Management:*** Respondent utilizes the underground mine method to extract coal from the Eagle seam. Respondent manages, handles, stores, treats, disposes of and/or potentially releases hazardous wastes and/or hazardous constituents at the Site. These waste materials continue to exist in a manner in which they enter groundwater and/or surface water, potentially contaminating these resources. This water is hydraulically connected to areas of known surface water and groundwater contamination.
  - a. It has been understood since at least the 1950's by the engineering and scientific community that it is generally impossible to mine coal in West Virginia and not impact groundwater and surface water unless certain management and engineering controls are put in place and strictly observed. Both surface and subsurface mining disturb the

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hydrogeological environment in much the same way - especially by changing hydraulic conductivity, secondary porosity, vertical connectivity and geochemistry.

- b. Except for chemicals added at the prep plant or introduced into the mine space by equipment or by mining/processing operations, most of the contaminants associated with coal mining are naturally occurring. But, due to factors such as acid-mine drainage, the mining of coal and the handling and disposal of associated wastes greatly increases the rate and concentration at which these contaminants are released to environmental media, particularly sediment, surface water, and groundwater within the subject Watersheds. What has been “locked-up” for millions of years is released from the parent material in a geologic instant and continues to be released for decades. The underground environment in this mined region is complex in relation to geochemistry and hydrogeology. Groundwater flows will respond to pumping rates and the hydrologic cycle differently than that of undisturbed areas, generally more quickly. Changing oxidation conditions in the subsurface – also greatly influenced by mining – will cause significant fluctuations in contaminant chemistry, fate and transport.
  - c. Barring other influences, the flow of this contaminated water would be expected to follow natural gradients. As the above-drainage mines in the watershed are in the Eagle seams of coal, the natural gradients for contaminated groundwater would be into the surface water and valley floor groundwater systems and stream beds. At the hillside/valley floor interface, contaminants from individual mines will commingle with contaminants introduced from upgradient mines, creating a single indivisible plume of contaminants in the valley floor sediments, groundwater and surface water system.
  - d. Groundwater users within the watershed – such as the Page-Kincaid Public Service District (hereinafter: “PSD”) – will alter natural groundwater flow gradients through groundwater extraction.
  - e. The PSD is struggling to meet the costs of treating recently increased contaminant loads in its Johnson Creek well, and these increases appear to be related to Respondent operations.
  - f. Respondent’s operations have resulted in impacts to groundwater and surface water (See Defendants Article 3 monitoring data; Upper Kanawha River TMDL), including increases of iron concentrations well above that which is naturally occurring.
  - g. Respondent’s impacts on groundwater and surface water resources within Fayette County have resulted in the loss of some beneficial uses of these surface water and groundwater resources.
  - h. These impacts include the significant increases in iron concentrations in the Page-Kincaid public water supply well on Johnson Creek. These increases have manifested themselves over approximately the last 2 years, a time period in which defendant operations are the only known and reasonable cause of these increased contaminant loads.
3. **Past Facility Investigations:** Respondent’s operations of its Facility in Fayette County have contributed and are contributing Pollutants and Contaminants, as that term is defined

in Section III of Fayette County Ordinance 2018-001, to the groundwater within the Johnson Creek watershed in Fayette County. As a result of this contamination, an increased burden on the Page-Kincaid PSD in its efforts to supply public water is now presented. Additionally, this contamination has comingled within and caused degradation of surface waters and sediment to the point that they can no longer meet their designated uses under the Clean Water Act and watersheds within the Respondents permit boundaries appear on the WV 303(d) list of impaired waters and/or are subject to TMDLs.

- a. Facility monitoring related to mining and discharge permits shows impacts to groundwater and elevated levels of iron and aluminum in groundwater (see Facility Article 3 monitoring data for 3<sup>rd</sup> Quarter 2018).
- b. Monitoring of the Page-Kincaid PSD water supply well indicates very high levels of total iron (*See*: PSD daily sheets).
- c. While facility mining plans show mining within the Johnson Creek watershed, no groundwater monitoring by the Respondent is known to exist within that watershed. The nearest Respondent groundwater monitoring point appears to be over 2 miles away.

## **II. DETERMINATIONS AND CONCLUSIONS OF LAW:**

Based on the Findings of Fact set out above, the Fayette County Code Enforcement Agency makes the following Determinations and Conclusions of Law:

- A. Respondent's Eagle Deep Mine Facility is a "facility or site", as defined in Section III(o) of Fayette County Ordinance 2018-001, located in Fayette County, West Virginia.
- B. Respondent, as a West Virginia Limited Liability Company, is a "person" as defined in Section III(dd) of Fayette County Ordinance 2018-001.
- C. Respondent is an "operator," as that term is defined in Section III(cc) of the Fayette County Ordinance 2018-001, of the Facility located in western Fayette County near the Kanawha County line in the Valley District 2.03 miles southwest of Powellton at approximately 38°04'06" north latitude, 81°20'26" west longitude, which is a deep mine located between Armstrong Creek (west) and Johnson Fork of Loop Creek (east).
- D. Respondent utilizes the underground mine method to extract coal from the Eagle seam. Respondent manages, handles, stores, treats, disposes of and/or potentially releases hazardous wastes and/or hazardous constituents at the Site.
- E. Respondent, as owner and operator of the Eagle Deep Mine Facility, has by its operations at its Facility in Fayette County, West Virginia, caused and contributed to, and is continuing to cause and contribute to, a condition that unreasonably interferes with the reasonable and comfortable use and enjoyments within Fayette County of "Waters of the State," as that term is defined in Section III(vv) of Fayette County Ordinance No. 2018-001; namely the groundwaters within the basin in which the Page-Kincaid PSD water supply well on Johnson Creek in Fayette County is located.
- F. Respondent, as owner and operator of the Eagle Deep Mine Facility, by its operations at its Facility in Fayette County, West Virginia, has caused or contributed to the Release, and

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is continuing to cause or contribute to the Release, into the Environment, as that term is defined in Section III of Fayette County Ordinance 2018-001, within Fayette County of Pollutants and Contaminants, as that term is defined in Section III of Fayette County Ordinance 2018-001, that have caused the presence within groundwaters within Fayette County of more than 300 µg/L of total iron; a condition declared to be a Public Nuisance in Fayette County by Section V(a)(10)(6)(vi) of Fayette County Ordinance 2018-001.

- G.** Respondent is a Person that has created, is creating, and threatens imminently to cause or create within Fayette County the Public Nuisance conditions declared in Sections V(a)(8) and (10)(6)(vi) of Fayette County Ordinance 2018-001, and, therefore, is a “Person liable with respect to such Public Nuisance conditions” within the meaning of Sections VI(a)(1) and VIII(a)(1) of Fayette County Ordinance 2018-001.
- H.** Respondent is a Person that has contributed to, is contributing to, or threatens imminently to contribute to the Public Nuisance conditions within Fayette County declared in Sections V(a)(8) and (10)(6)(vi) of Fayette County Ordinance 2018-001, and, therefore, is a “Person liable with respect to such Public Nuisance conditions” within the meaning of Sections VI(a)(1) and VIII(a)(1) of Fayette County Ordinance 2018-001.
- I.** As a Person described in Section VI(a)(1) of Fayette County Ordinance 2018-001, Respondent is liable, pursuant to the provisions of Section VI(a)(1-9)(C) for such monitoring, testing, analysis and reporting, at Respondent’s cost, as may be lawfully ordered by the Code Enforcement Agency pursuant to Section **VIII(b)** of Fayette County Ordinance 2018-001.
- J.** The FCCEA has determined that the monitoring, testing, analysis and reporting requirements set forth in this Order # 2018-001-8b-01 are necessary and proper: **(i)** timely and reliably to ascertain the existence, nature, or extent of Public Nuisance conditions declared in Sections V(a)(8) and (10)(6)(vi) of Fayette County Ordinance 2018-001 with respect to which Public Nuisance conditions Respondent is liable, and the nature and extent of any Endangerment(s) to the Public Health, Safety, Welfare, or the Environment within Fayette County that may be presented by such Public Nuisance conditions; and **(ii)** timely, properly and competently to select an Abatement Action with respect to such Public Nuisance conditions that complies with the requirements of section IX of Fayette County Ordinance 2018-001 to ascertain the nature and extent of any potential hazard to human health or the environment that is or may be presented by such Public Nuisance conditions.

### **III. ORDER REQUIRING MONITORING, TESTING, ANALYSIS AND REPORTING:**

Pursuant to its authority under Section VIII(b) of Fayette County Ordinance 2018-001, the Fayette County Code Enforcement Agency (hereinafter: “FCCEA”) hereby Orders Respondent timely and competently to perform and implement all of the requirements set forth in Section III of this Order:

#### **a. NOTIFICATION OF INTENT TO COMPLY WITH THIS ORDER:**

On or before the twenty-one (21) days following it receipt of service of this Order, Respondent shall file with the FCCEA and with the Office of the Fayette County Clerk a written notification of its intent to comply with the requirements of this Order.

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**b. SAMPLING AND ANALYSIS WORKPLAN:**

1. Within thirty (30) days of its receipt of service of this Order, Respondent shall file with the FCCEA and with the Office of the Fayette County Clerk a Sampling and Analysis Workplan ("Workplan") for monitoring, testing, analysis, and reporting to ascertain the nature and extent of the hazards to the Public Health, Safety, Welfare or the Environment within Fayette County posed by any Hazardous Wastes, as that term is defined by Section III(u) of Fayette County Ordinance 2018-001, and any Pollutants and Contaminants, as that term is defined by Section III(ee) of Fayette County Ordinance 2018-001, that are present at or may have been released into the Environment from Respondent's operations within and adjacent to the Johnson Creek Watershed in Fayette County. **Respondent is hereby ordered timely and competently to implement the Workplan, as approved, or modified and approved, by the FCCEA.**
2. The Workplan shall be developed consistent with Applicable Requirements, as that term is defined in Section III(d) of Fayette County Ordinance 2018-001.
3. The Workplan shall, at a minimum, contain the following components:
  - A. A preliminary facility-specific Conceptual Site Model (CSM), and identification of data gaps in the CSM;
  - B. A plan and timetable for characterizing the groundwater flow direction(s) and groundwater quality within and adjacent to the Johnson Creek Watershed. The plan shall focus on the collection of groundwater samples upgradient of, within, and downgradient of source areas/potential sources. The plan shall include the location and depth(s) of monitoring wells, well construction methods, well sampling methods, analytical methods, and the parameters for analysis. The plan shall include groundwater modeling which will include the influence of the public water supply well operated by the Page-Kincaid PSD within the Johnson Creek Watershed.
  - C. A provision assuring access for employees, agents, and contractors of FCCEA at all reasonable times for purposes of inspection and verifying compliance with the provisions, terms and conditions of this Order; and
  - D. A timetable for the work to be performed and properly and completely documented and reported to the FCCEA, including submittal of quarterly progress reports and a final report.
4. The Workplan shall be designed to define the nature, location, extent, direction and rate of movement of any Hazardous Wastes, as that term is defined by Section III(u) of Fayette County Ordinance 2018-001, and any Pollutants and Contaminants, as that term is defined by Section III(ee) of Fayette County Ordinance 2018-001, that are present at or have been released from the Facility. The Workplan shall require documentation of the procedures Respondent shall use to conduct the investigations necessary to fill in gaps in the CSM, including:

- A. characterize the potential pathways of migration of Hazardous Waste and Pollutants and Contaminants;
  - B. characterize the sources of hazardous waste and Pollutants and Contaminants contamination;
  - C. define the degree and extent of hazardous waste and Pollutants and Contaminants contamination;
  - D. identify actual or potential receptors; and
  - E. identify potential remediation options.
5. In accordance with the timetable in the Workplan, or within forty-five (45) days of completion of any additional work required pursuant to Paragraph V ("Additional Work"), Respondent shall submit a final report to FCCEA addressing the Workplan requirements and goals in this Section III of this Order. The final report shall also include:
- A. A summary of all actions taken to comply with this Order;
  - B. An evaluation/comparison of data collected to appropriate USEPA Risk Screening Levels, which can be found at: <https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables>, and WV Water Quality Standards; and
  - C. Recommendations for further actions, including remediation options.
6. FCCEA acknowledges that Respondent may have completed some of the tasks required by this Order or that Respondent may have available some of the information and data required by this Order. Any such work performed prior to the issuance of this Order may be used by Respondent to meet the requirements of this Order, upon submission of all appropriate documentation of such work to, and formal approval by, FCCEA.

**c. MINIMUM QUALIFICATIONS FOR PERSONNEL:**

All work performed by Respondent pursuant to this Order shall be under the direction and supervision of an individual who is qualified by professional education and training, and who has demonstrated expertise in hazardous waste site investigation. At least fifteen (15) days before any work required by this Order is performed, Respondent shall submit to FCCEA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors to be used in carrying out the terms of this Order. Additionally, Respondent shall ensure that when a license is required by applicable law, only licensed individuals shall be used to perform any work required by this Order.

**d. ADDITIONAL WORK**

Based on work performed under the Workplan described above, FCCEA may determine that additional monitoring, testing, analysis, and/or reporting is necessary adequately to ascertain the nature and extent of any hazard to human health and the environment which may be presented by the presence or release of any hazardous waste, or any Pollutants and Contaminants, as that term is defined by Section III(ee) of Fayette County Ordinance 2018-001, at or from the Facility. If FCCEA determines that such additional work is necessary,

FCCEA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with FCCEA to discuss the additional work. If required by FCCEA, Respondent shall submit for FCCEA approval, a workplan for the additional work. FCCEA will specify the necessary contents of such workplan. Such workplan shall be submitted by Respondent within thirty (30) days of receipt of FCCEA's determination that additional work is necessary, or according to an alternative schedule established by FCCEA.

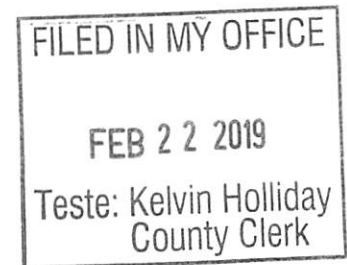
**IT IS SO ORDERED** by the majority vote of the Fayette County Code Enforcement Agency, Fayette County, West Virginia at its duly-noticed Public Meeting on this 20th day of December 2018.

**FAYETTE COUNTY CODE  
ENFORCEMENT AGENCY  
FAYETTE COUNTY, WEST VIRGINIA**

By: Debbie Berry  
Debbie Berry  
Fayette County Administrator  
Its Chairperson

**ATTEST:**

Altha L. Stoler  
Secretary  
Fayette County Code Enforcement Agency



Kevin E Holliday, Clerk  
Instrument 20190002768  
02/22/2019 @ 01:04:51 PM  
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Book 9 @ Page 89  
Pages Recorded 2



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