

NOTICE OF INTENTION TO SUE PURSUANT TO 30 U.S.C. § 1270(a)(2)

To: Ken Salazar, Secretary of the Interior
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Pursuant to 30 U.S.C. § 1270(b) and 30 C.F.R. § 700.13, Citizens Coal Council ("CCC") notifies you of its intention to initiate a civil action against you under Section 520 of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), 30 U.S.C. § 1270, based on your failure to perform acts or duties under SMCRA which are not discretionary with you. Your failure to perform these acts or duties constitutes a violation of SMCRA that immediately affects the CCC's legal interests so as to allow the organization to file the intended civil action immediately after providing this notice. In the event that CCC elects to withhold the filing of the intended action for any reason, or in the event that any court determines that CCC may not commence proceedings against you immediately after providing this notice, this notice shall serve the alternate purpose of informing you that CCC intends to commence the intended action 60 days from the date of this notice or as soon thereafter as counsel may file the necessary documents.

CCC is a national grassroots organization of groups and individuals, headquartered in Washington, Pennsylvania. Founded in 1989 and incorporated in Pennsylvania as a non-profit charitable organization, CCC works for social and environmental justice. CCC's member groups include the Mountain Watershed Association of Melcroft, Pennsylvania. Among other activities, CCC strives to protect people, homes, water, communities, and the environment from coal mining damage. CCC also is dedicated to enforcing SMCRA and other state and federal environmental protection laws.

I. THE PROVISIONS OF SMCRA THAT IMPOSE THE MANDATORY ACTS OR DUTIES THAT YOU HAVE NOT PERFORMED.

SMCRA imposes on you the mandatory, non-discretionary duty to promulgate a federal program if any State fails to implement, enforce, or maintain an approved State program as provided for in SMCRA. 30 U.S.C. § 1254(a)(3). The Commonwealth of Pennsylvania has failed to implement, enforce, or maintain its approved State program, 30 C.F.R. Part 938 (2008), and thus has violated an ongoing and enforceable federal obligation pursuant to 30 C.F.R. § 733.11 (2008), in at least the respects described in the following paragraphs:

1. The state regulatory authority for Pennsylvania – the Pennsylvania Department of Environmental Protection (“PADEP”) – is engaged in a pattern and practice of failing to perform its non-discretionary duty to withhold approval of permit applications that request authorization to deposit coal combustion waste (“CCW”) at coal mines but do not contain accurate or complete information concerning (a) the quantity and quality of water in surface and ground water systems that the proposed CCW deposit may affect (including the nature and sources of any existing pollution of surface or ground water on the proposed permit area or adjacent areas) or (b) the chemistry and pertinent physical properties of the CCW that the permit applicant proposes to deposit, as determined through appropriate testing. Among the recurring errors in PADEP’s program implementation is its failure to require permit applicants to provide adequate information concerning concentrations of arsenic, cadmium, chromium, lead, nickel, selenium, sulfate, and zinc in existing water resources that CCW deposits may affect. The statutory and regulatory provisions that this pattern and practice violates include 30 U.S.C. §§ 1257(b)(11) and (b)(14), 1258(a)(2), (a)(3), (a)(5), (a)(12), (a)(13), 1260(b)(1), and their approved equivalents in the Pennsylvania state

regulatory program for implementing SMCRA and 30 C.F.R. §§ 780.21(b), 784.14(b) (2008), and their approved equivalents in the Pennsylvania state regulatory program for implementing SMCRA.

2. PADEP is engaged in a pattern and practice of failing to perform its non-discretionary duty to withhold approval of permit applications that request authorization to deposit CCW at coal mines without first performing a cumulative hydrologic impact assessment based on scientifically sound and reasonable baseline data concerning the CCW that the permit applicant proposes to deposit and based further on scientifically sound and reasonable assessment of (a) the cumulative hydrologic impact of (i) the proposed CCW deposit and (ii) all other surface coal mining and reclamation operations in the pertinent cumulative impact area, (b) appropriate criteria for determining material damage to the hydrologic balance outside the permit area, including at a minimum each numeric water quality standard and each maximum contaminant level (“MCL”) applicable to each water resource that the proposed operation may affect. Among the recurring errors in PADEP’s program implementation are its failures (a) to require permit applicants to provide adequate baseline cumulative hydrologic information concerning concentrations of arsenic, cadmium, chromium, lead, nickel, selenium, sulfate, or zinc in each water resource within each mine’s cumulative impact area and (b) to include the established state water quality standards for each of those substances as material damage criteria for each mine involving CCW placement. The statutory and regulatory provisions that this pattern and practice violates include 30 U.S.C. §§ 1257(b)(11), 1260(b)(3), and their approved equivalents in the Pennsylvania state regulatory program for implementation of SMCRA and 30 C.F.R. §§ 773.15(e), 780.21(c), 784.14(c), and their approved equivalents in the Pennsylvania state regulatory program for implementing SMCRA.

3. PADEP is engaged in a pattern and practice of failing to perform its non-discretionary duty to withhold approval of permit applications that request authorization to dispose of CCW at coal mines in the absence of scientifically sound and reasonable surface water and groundwater monitoring plans that (a) are capable of detecting all potential adverse hydrologic impacts of the CCW deposit on surface and groundwater resources and (b) include descriptions of how the data obtained pursuant to the monitoring programs may be used to determine the impact of the proposed operation on the hydrologic balance. Among the recurring errors in PADEP's program implementation is its failure to require permit applicants to formulate monitoring plans that provide information concerning concentrations of arsenic, cadmium, chromium, lead, nickel, selenium, sulfate, and zinc in each water resource that CCW placement may affect. The statutory and regulatory provisions that this pattern and practice violates include 30 U.S.C. § 1258(a)(13) and their approved equivalents in the Pennsylvania state regulatory program for implementing SMCRA and 30 C.F.R. §§ 780.21(i) and (j), 784.14(h) and (i), and their approved equivalents in the Pennsylvania state regulatory program for implementing SMCRA.

4. PADEP is engaged in a pattern and practice of failing to perform its non-discretionary duty to require for each coal mine at which the agency authorizes placement of CCW a performance bond in an amount sufficient to assure completion of the reclamation plan if the work has to be performed by PADEP in the event of forfeiture. The statutory and regulatory provisions that this pattern and practice violates include 30 U.S.C. § 1259(a) and its approved equivalent or equivalents in the Pennsylvania state regulatory program for implementing SMCRA and 30 C.F.R. § 800.14 and its approved equivalent or equivalents in the Pennsylvania state regulatory program for implementing SMCRA.

5. PADEP is engaged in a pattern and practice of failing to perform its non-discretionary duty to ensure that surface coal mining and reclamation operations that involve the disposal of CCW are conducted in a manner that prevents material damage to the hydrologic balance outside the permit area. The statutory and regulatory provisions that this pattern and practice violates include 30 U.S.C. §§ 1265(b)(10), (b)(11), (b)(14), (b)(21) (b)(23), and (b)(24), 1266(b)(4), (b)(5), (b)(7), (b)(9), (b)(10), (b)(11), and their approved equivalents in the Pennsylvania state regulatory program for implementing SMCRA and 30 C.F.R. §§ 816.41(a), (b)(1) and (d)(1), 817.41(a), (b)(1), and (d)(1), and their approved equivalents in the Pennsylvania state regulatory program for implementing SMCRA.

6. In each of the foregoing ways, PADEP has failed and continues to fail to implement, administer, enforce and maintain its approved state regulatory program in accordance with SMCRA and the federal regulations that implement that statute, despite its non-discretionary duty to do so pursuant to 30 C.F.R. § 733.11.

II. FACTS THAT DEMONSTRATE YOUR FAILURE TO CARRY OUT THE APPLICABLE MANDATORY, NON-DISCRETIONARY DUTY.

You have failed to prepare, promulgate, or implement a federal program for Pennsylvania pursuant to your non-discretionary duty under 30 U.S.C. § 1254(a)(3) despite a host of readily ascertainable facts which establish Pennsylvania's failure to implement, enforce, or maintain its approved State program as provided for in SMCRA. With respect to the practice of depositing CCW in coal mines generally, the National Research Council ("NRC") assessed the inherent risks in a congressionally-mandated report ("NRC report"). *Managing Coal Combustion Residues in Mines, Committee on Mine Placement of Coal Combustion Wastes*, National Research Council of the National Academies, 2006. http://books.nap.edu/openbook.php?record_id=11592

NRC explained that CCWs “often contain a mixture of metals and other constituents in sufficient quantities that they may pose public health and environmental concerns if improperly managed.” NRC Report at 3. Given “the known impacts that can occur when [CCWs] react with water in surface impoundments and landfills,” the NRC recommended that CCW “placement in mines be designed to minimize reaction with water and the flow of water through [CCW].” At the same time, however, the NRC recognized that there are no known “methods that will totally prevent [CCW] from coming into contact with infiltrating water.” NRC Report at 7.

Since publication of the NRC Report, CCC and others have repeatedly informed PADEP of existing environmental damage caused by improperly regulated placement of CCW in Pennsylvania coal mines, often in direct contact with groundwater or surface water. In 2007 the Clean Air Task Force released a report extensively documenting groundwater and surface water contamination from numerous CCW deposits across Pennsylvania. *See Clean Air Task Force, Impacts on Water Quality from Placement of Coal Combustion Waste in Pennsylvania Coal Mines (2007)* (“Pennsylvania Report”) available at http://www.catf.us/projects/power_sector/power_plant_waste/paminefill/.

The Pennsylvania Report provides substantial evidence from PADEP’s own files showing or strongly suggesting that the practice of depositing CCW in coal mines puts the waste into contact with groundwater and that adverse impacts result from that contact. Water easily and quickly infiltrates the spoil left in mines where CCW is placed, and fractures from blasting become underground channels that allow polluted groundwater to flow rapidly offsite. As a result, toxic heavy metals and other CCW contaminants can and do leach into aquifers and connected surface waters. The Pennsylvania Report shows that pollution levels in affected waters downgradient and downstream of certain CCW deposits in Pennsylvania now exceed applicable water quality and safe

drinking water standards. Worse yet, the full extent of ongoing water contamination in Pennsylvania is unknown due to inadequate monitoring of CCW deposits and the streams that they affect.

The Pennsylvania Report presents compelling evidence and analyses of serious environmental damage at five separate coal mines in four different Pennsylvania counties at which CCW has been used as mine fill.¹ The following paragraphs summarize the Pennsylvania Report's findings concerning each of these five mines.

1. McDermott Mine, Cambria County

Coal ash from co-generation plants apparently has contaminated groundwater and surface water with toxic levels of cadmium, selenium, sulfate, manganese and other pollutants. Approximately 316,000 tons of CCW were deposited at the 73-acre mine from 1996-2004 as "alkaline addition" to remediate acid mine drainage triggered by earlier mining operations. The CCW deposits, however, failed to stop the acid mine drainage. Worse yet, after CCW placement in the mine, cadmium and selenium appeared in the groundwater at levels exceeding (a) Pennsylvania's groundwater standards, which are equivalent to the federal Drinking Water Standards or maximum contaminant levels ("MCLs") under the Safe Drinking Water Act, *see* 42 U.S.C. 300g; 40 CFR 142.10(a); 40 CFR 141.62(4), (10) (2008), and (b) the United States Environmental Protection Agency's "Appendix I" standards under regulations that implement the Resource Conservation and Recovery Act, *see* 40 C.F.R. § 257.3-4(c)(2) (2008).

Neither cadmium nor selenium had ever been detected in the hydrologic setting prior to placement of CCW in the McDermott mine. After CCW placement commenced, cadmium

¹ The Pennsylvania Report also found substantial evidence of pollution that appears to be attributable to CCW at five additional mines.

detections appeared and proliferated at several monitoring points downgradient of the CCW deposit. Eventually, cadmium concentrations in groundwater at the property line increased to more than 13 times the Pennsylvania groundwater protection standard and nearly 7 times the Appendix I standard. Cadmium concentrations reached 0.019 milligrams per liter at a downgradient mine seep, which discharges to a stream more than 800 feet beyond the property line. This concentration is 9 times the applicable criterion maximum concentration and 76 times the applicable criterion continuous concentration established pursuant to the Federal Water Pollution Prevention and Control Act, 33 U.S.C. §§ 1251-1387 (“Clean Water Act”).²

Selenium concentrations at the property line of the McDermott mine, downgradient of the CCW deposits there, increased from mere detection level prior to CCW placement to concentrations more than 36 times the applicable criterion continuous concentration. At a seep located 800 feet beyond the property line, selenium concentrations rose to 5 times the applicable criterion continuous concentration. In all, the hydrologic impact of the McDermott Mine has rendered offsite water unfit for human consumption and forced abandonment of a spring used as a drinking water source. This impact appears to be the result, at least in part, of CCW deposits in that mine.³

² Criterion maximum concentration and criterion continuous concentration are the relevant state and federal water quality standards that protect aquatic life. Criterion maximum concentration is the concentration of a pollutant above which immediate lethality to aquatic life occurs from acute toxicity. Criterion continuous concentration is the concentration of a pollutant above which long term adverse effects occur from chronic toxicity.

³ See discussion of the McDermott Mine, Pennsylvania Report, pp. 110-164.

2. Ernest Mine, Indiana County

More than 1.5 million tons of coal ash from the Cambria co-generation power plant have been placed at the Ernest Mine since October 1996, also as an alkaline addition to remediate acid mine drainage. After placement of CCW in this mine, lead concentrations have reached as high as 0.146 milligrams per liter in water discharging from a seep downgradient from CCW deposits. This concentration exceeded the applicable criterion maximum concentration by 2.5 times and the applicable criterion continuous concentration by 58 times. Cadmium concentrations water discharging from the same seep have risen to as much as 0.092 milligrams per liter – 46 times the applicable criterion maximum concentration and 368 times the applicable criterion continuous concentration. Additionally, testing has repeatedly revealed concentrations of nickel, zinc, chromium, and other metals that exceed applicable water quality standards at monitoring station E-5.

Rising concentrations of heavy metals at monitoring station E-5 – to levels that repeatedly exceed water quality standards by orders of magnitude – are of particular concern because water sampled at monitoring station E-5 discharges to McKee Run, a perennial stream flowing off the permit area. Despite the heavy metals concentrations observed at E-5, PADEP has failed to modify the permit for the Ernest Mine to require the permittee to monitor concentrations of these metals or other CCW constituents in McKee Run. Indeed, PADEP has conceded in discussions with representatives of CCC and other organizations that it has not required the permittee to monitor water quality in McKee Run in a manner capable of ascertaining the impacts of heavy metals in the E-5 discharge on that stream.⁴

⁴ See Letter to John Hanger, Acting Secretary, Pennsylvania Department of Environmental Protection, from Jeff Stant, Environmental Integrity Project, April 17, 2009, page 11. PADEP (continued...)

3. Swamp Poodle Mine, Clearfield County

Approximately 214,000 tons of coal ash were placed in the Swamp Poodle Mine as alkaline addition to remediate acid mine drainage. Afterwards, concentrations of arsenic, cadmium, lead, and selenium in the groundwater were all measured in excess of applicable Pennsylvania groundwater standards and U.S.E.P.A. Appendix I standards. Arsenic concentrations in affected groundwater were measured at 77 times the applicable Appendix I standard – and at 389 times the applicable MCL. Cadmium concentration exceeded the applicable Appendix I standard by 23 times. Although at this site there is evidence of pre-placement contamination of groundwater with arsenic at levels exceeding the applicable Appendix I standard, it appears that additional leaching of arsenic from the CCW deposit is contributing to greater post-placement exceedences of the applicable MCL for that pollutant. Additionally, monitoring data has indicated that CCW leaching has increased the concentrations of other contaminants such as cadmium, lead, and selenium from levels below the applicable maximum contaminant levels before CCW placement to levels many times higher afterwards. Instead of requiring the permittee to institute and maintain an effective monitoring program, PADEP authorized the cessation of monitoring after collection of only three annual

⁴(...continued)

conceded this deficiency of monitoring in a meeting with Environmental Integrity Project and Pennsylvania citizens on November 13, 2008.

For a more detailed discussion of the Ernest Mine, *see* Pennsylvania Report, pp. 51-109 and Jeff Stant, Charles Norris, P.G., Robert Gadinski, P.G., *Assessment of Individual Mine Sites Utilized for Ash Placement*, Environmental Integrity Project, April 9, 2009, Appendix at pages 2-21.

samples. The three collected samples contained the highest concentrations of these toxic metals ever recorded at the site.⁵

4. Ellengowan and BD Mines, Schuylkill County

In mine pools downgradient of four deposits totaling more than 16 million tons of CCW at these two mines, concentrations of lead, cadmium, and other metals have been measured in groundwater at levels far exceeding applicable Appendix 1 standards and maximum contaminant levels. Of greatest concern are multiple toxic concentrations of lead measured at monitoring point MP006, which samples the massive Gilberton Mine Pool Discharge. That discharge flows at a rate of millions of gallons per day directly into Mahanoy Creek before that stream exits the BD permit area. At least eleven measurements of lead in this discharge have exceeded the criterion continuous concentration for lead by a range of 4 to 64 times since the commencement of CCW placement. There was only one such exceedence in this discharge before CCW placement. Nine of the measurements in question also exceeded the applicable criterion maximum concentration; there was no exceedence of this standard prior to CCW placement at the BD mine.

Despite high levels of lead in the Gilberton Mine Pool Discharge, PADEP officials have failed to require or conduct monitoring of lead concentrations in the water column or sediments in Mahanoy Creek downstream of the discharge. Nor has PADEP required or conducted monitoring to ascertain whether adverse impacts to aquatic life or other resources have resulted from the discharges of lead and other metals from these mines.⁶ Concentrations of lead and other metals

⁵ See discussion of the Swamp Poodle Mine, Pennsylvania Report, pp. 205-236.

⁶ See Letter to John Hanger, Acting Secretary, Pennsylvania Department of Environmental Protection, from Jeff Stant, Environmental Integrity Project, April 17, 2009, page 13. PADEP (continued...)

measured at MP006 and other ash monitoring points in these two mines are being examined by U.S.E.P.A. in a preliminary investigation under Superfund.⁷

Following release of the Pennsylvania report, CCC and other organizations embarked on a lengthy effort to persuade PADEP to implement the Commonwealth's approved state regulatory program under SMCRA in a manner that effectively regulates CCW placement in surface coal mining and reclamation operations by:

- (1) requiring accurate and complete baseline data concerning (a) metals pollution at proposed CCW placement sites prior to the placement of CCW and (b) the pertinent physical and chemical characteristics of the CCW to be placed in the mine in question;
- (2) withholding permits from proposed operations that fail to demonstrate the ability to avoid off-site pollution as the result of CCW placement;
- (3) computing the amount and term of performance bonds for CCW placement sites in a manner that ensures that PADEP will be able to reclaim each site properly in event of forfeiture;
- (4) preventing material damage to the hydrologic balance outside permit areas where CCW placement is approved by (a) requiring permittees to monitor hydrologic changes caused by CCW in a competent manner that includes the development of

⁶(...continued)
conceded this deficiency of monitoring in a meeting with Environmental Integrity Project and Pennsylvania citizens on November 13, 2008.

⁷ See http://www.epaos.org/site/site_profile.aspx?site_id=5016. For more detailed discussion of the Ellengowan and BD Mines, see Pennsylvania Report at pp. 237-318 and 349-374, respectively.

adequate data on concentrations of arsenic, cadmium, chromium, lead, nickel, selenium, sulfate, and zinc, (b) triggering effective remedial efforts before material damage occurs, and (c) instituting appropriate point source controls in surface discharges from CCW placement sites into receiving waters; and

- (5) taking appropriate enforcement action and assessing effective civil penalties to address violations of hydrologic protection requirements when they do occur.

In two April 2009 letters to PADEP, representatives of CCC and other organizations formally called the agency's attention to the Pennsylvania Report, summarized its findings, and laid out the legal requirements that the approved Pennsylvania state program and other laws impose on PADEP with respect to regulation of CCW placement in coal mines.⁸ The letters presented renewed requests for:

- (1) adoption of competent hydrologic monitoring programs at CCW placement sites, including (a) upgradient and pore water monitoring wells to supply data necessary to make scientifically sound and reasonable determinations of the role of CCW placement in causing observed post-placement deterioration of water quality at downgradient monitoring sites, (b) regular monitoring of potentially affected streams downgradient of discharges from CCW placement sites to those streams that significantly exceed applicable water quality standards for certain heavy metal pollutants, and (c) monitoring for a duration adequate to detect the long term migration of potentially harmful CCW constituents outside pertinent permit areas;

⁸ Citizen efforts to persuade PADEP to regulate CCW placement effectively actually began considerably earlier, in meetings with PADEP officials and regulatory staff in November 2007. The April 2009 letters recapitulated prior discussion of CCW placement issues and called upon PADEP to change course and implement its approved SMCRA program and other laws in a manner that effectively regulates the activity.

- (2) implementation of longstanding protocols for the identification and proper interpretation of “outliers” in hydrologic monitoring results, to the end that observed high concentrations of certain pollutants are not dismissed as “outliers” when application of the established protocols would preclude such characterization;
- (3) appropriate enforcement action to address unlawful discharge of polluted water from CCW placement sites or unlawful migration of polluted water into groundwater located outside the permit area in which CCW placement has been approved;
- (4) adoption of clear, simple corrective action standards in hydrologic reclamation plans in each permit that authorizes CCW placement in a coal mine;
- (5) requirement of detection levels in hydrologic monitoring programs that are significantly lower than the level that constitutes the maximum allowable concentration of a particular pollutant in Pennsylvania’s applicable water quality standards;
- (6) strict implementation and enforcement of SMCRA’s requirement, and the parallel requirement of Pennsylvania’s approved state regulatory program under that statute, to isolate or otherwise treat “toxic forming material” to avoid “toxic mine drainage” wherever CCW, properly characterized, is in fact a “toxic forming material” – as it has proven to be in a host of Pennsylvania CCW placement sites;
- (7) use of (a) the Pennsylvania Drinking Water Standard as the “Maximum Acceptable Leachate Concentration” (MALC) for metals in any leach test used to characterize CCW prior to authorizing its placement in a coal mine and (b) a leach test recommended by the U.S.E.P.A.’s Science Advisory Board and National Research

Council, which can more dependably characterize the potential of CCW to leach pollutants at levels exceeding the MALC, rather than the Synthetic Precipitation Leaching Procedure used by PADEP; and

- (8) adoption of adequate protocols for determining the amount of performance bonds at approved CCW placement sites.

PADEP responded by mis-characterizing positions that CCC and other organizations had taken and by avoiding the questions those organizations had raised. PADEP attempted both to discredit data taken from its own files and to distort the organizations' interpretation of the data.

The concerned organizations replied by pointing out that the available data concerning certain mines with CCW deposits establish, at a minimum, the appearance of pollution as the result of CCW placement. The organizations reiterated their core contention that additional monitoring is needed at several of the sites to provide data necessary to a scientifically sound and reasonable determination of whether CCW has caused or contributed to pollution that unquestionably has occurred and, if so, what steps are necessary to abate the pollution.

With respect to each mine at issue, CCC and other organizations showed how the existing data are inconsistent with each PADEP assertion that the CCW placement in question has proven harmless. The organizations pointed out instances in which PADEP had relied on data obtained from testing performed with improperly high detection limits to support assertions that certain pollutants had not caused significant water quality problems. In a number of instances, high detection limits that PADEP authorized in monitoring plans have prevented the accumulation of data capable of indicating exceedences of applicable water quality standards. For example, at the Ellengowan and BD Mines, PADEP authorized permittees to use detection limits greater than the

applicable standard for lead in 56 of 174 measurements – one third of the samples taken from CCW monitoring stations and analyzed for lead. At least in 26 of those sampling events, detection limits were set 6.7 times higher than the applicable drinking water standard. In one case, PADEP accepted a result that was “below a detection limit” more than 33 times the drinking water standard.⁹

CCC and other organizations protested PADEP’s continued refusal to require additional hydrologic monitoring necessary to develop a scientifically sound, reasonable determination whether observed increases in certain pollutants at CCW placement mines are attributable to CCW leaching or instead to some other factor. Finally, the organizations restated their demand that PADEP take appropriate enforcement action against demonstrated off-permit discharges or migrations of polluted water from the mines at issue, regardless of whether CCW is in fact the exact source of the pollution.

In a May 2009 meeting and in informal communications since, PADEP has refused to take immediate action to correct the clear deficiencies in the agency’s implementation of the approved Pennsylvania program. Instead, PADEP has pressed forward with a plan to adopt special regulations encouraging so-called “beneficial use” of CCW. Those regulations threaten to enshrine rather than correct many, if not all, of the problems in program implementation identified in this notice.

For its part, your Office of Surface Mining Reclamation and Enforcement has publicly done little, if anything, to identify the problem, assess its scope, or persuade PADEP to take effective corrective action. Accordingly, CCC intends to institute a civil action to compel you to perform your mandatory, non-discretionary duty under the circumstances to promulgate a federal regulatory program for the Commonwealth of Pennsylvania.

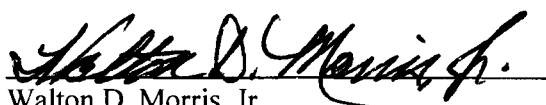
⁹ See discussion of the Ellengowan and BD Mines in the Pennsylvania Report at page 298.

III. ADDITIONAL REQUIRED INFORMATION.

CCC's address is c/o Aimee Erickson, Council Coordinator, Post Office Box 964, Washington, Pennsylvania 15301. The names, addresses, and telephone numbers of CCC's legal counsel are shown below. CCC requests that any person receiving this notice direct all inquiries to the undersigned legal counsel.

Dated September 12, 2009

CITIZENS COAL COUNCIL
-By Counsel-



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