

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

2010 DEC 17 P 3:57

U.S. DISTRICT COURT
N.D. OF ALABAMA

TENNESSEE RIVERKEEPER, INC.,

Plaintiff,

vs.

HOPE COAL CO., INC.,

Defendant.

CASE NO.:

CV-10-BE-3515-S

COMPLAINT

COMES NOW the Plaintiff to make and file this Complaint as follows:

Jurisdiction and Venue

1. This Court has subject matter jurisdiction over the claims set forth in this Complaint by virtue of Section 505 of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1365 (a), and by virtue of 28 U.S.C. § 1331 (actions arising under the Constitution or laws of the United States). The relief requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue declaratory relief in case of actual controversy and further necessary relief based on such a declaration); 33 U.S.C. § 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. § 1319(d), 1365(a) (civil penalties).
2. Venue is appropriate in the Northern District of Alabama pursuant to 33 U.S.C. § 1365 (c)(1) because the acts, omissions, and/or violations complained of herein occurred within the Northern District of Alabama.

Notice

3. Pursuant to 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.3, on October 9, 2010, Plaintiff gave Defendant, Hope Coal Co., Inc., notice of the violations alleged herein and its intent to sue more than Sixty (60) days prior to the filing of this Complaint. At the same time a copy of the notice was mailed to the Administrator of the Environmental Protection Agency (EPA), the Regional Administrator of Region IV of the EPA, and the Director of the Alabama Department of Environmental Management (ADEM). Service of notice on Defendant was by certified mail. Additionally, notice was mailed to the registered agent for the corporate defendant.
4. Since the Plaintiff gave notice, the violations complained of herein have not ceased. The EPA or the State of Alabama has not commenced and diligently prosecuted a civil or criminal enforcement action in a court of the United States or a state for the violations set out herein. The EPA or the state has not commenced and diligently prosecuted an administrative action under 33 U.S.C. §1319(g) or under a state law comparable to 33 U.S.C. §1319(g) for the violations set out herein. The EPA or the state has not issued a final order not subject to further judicial review and the Defendant has not paid a penalty assessed under 33 U.S.C. §1319(g) or under a state law comparable to 33 U.S.C. §1319(g) for the violations set out herein. Furthermore, the EPA or the state did not commence an action under 33 U.S.C. §1319(g) prior to Plaintiff giving notice under 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.3 and this action is being filed before the 120th day after such notice was given.

PARTIES

5. Plaintiff, Tennessee Riverkeeper, Inc. is a non-profit membership corporation, with over 250 members, that is dedicated to the preservation, protection, and defense of the Tennessee River and that actively supports effective enforcement and implementation of environmental laws, including the FWPCA and the Alabama Water Pollution Control Act (AWPCA), on behalf and for the benefit of its members.
6. Defendant, Hope Coal Co., Inc. is believed to be a corporation and is engaged in the operation of mining activities located within the Northern District of Alabama. On May 7, 2010 the defendant entered into an agreement for Hope Coal to transfer its Alabama Surface Mining Commission (ASMC) permit for the operation of Meredyth Mine to National Coal of Alabama, Inc. The transfer was approved by the ASMC on August 16, 2010. Under the agreement, National Coal agreed “to assume the responsibility, coverage, and liability” of the ASMC permit. However, as of the date of this pleading, the sale of Meredyth Mine to National Coal of Alabama has apparently not been completed and the ADEM NPDES permit has apparently not been transferred from Hope Coal to National Coal.

NATURE OF THE CASE

7. This is an action for declaratory judgment, injunctive relief, civil penalties, and attorney fees to enforce provisions of the AWPCA and the FWPCA, regulations adopted pursuant to said acts, and/or permits adopted and/or issued pursuant to said acts.
8. Defendant, Hope Coal Co., Inc., owns and operates the Meredyth Mine, which discharges pollutants into waters of the United States, namely, Allen Mill Creek, Bagwell Branch, Butler Falls Branch, Posey Creek, Whitehead Creek, and other tributaries of Bear Creek,

in Franklin and Winston Counties, Alabama, all of which are tributaries of the Tennessee River, and are waters of the state and of the United States.

9. Defendant, Hope Coal Co., Inc., is in violation of sections 301 and 402 of the CWA (33 U.S.C. §1311 and 1342) and sections 122.1 et seq of Title 40 of the Code of Federal Regulations. Defendant, Hope Coal Co., Inc. is also in violation of similar provisions of Alabama law. See, Code of Alabama 1975, section 22-22-9 and ADEM Administrative Code Rule 335-6-6-.03. These laws require that no facility shall discharge pollutants to waters of the United States or waters of the state except as authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”). Any noncompliance with an NPDES permit is a violation of the permit, Alabama NPDES rules, the AWPCA and the FWPCA, and is grounds for enforcement by civil action.
10. Members of Tennessee Riverkeeper have recreated in, on or near, or otherwise used and enjoyed, or attempted to use and enjoy, Bear Creek downstream from this mine in the past, and they intend to do so in the future. They have a direct and beneficial interest in the continued protection, preservation, and enhancement of the environmental, aesthetic, and recreational values in Bear Creek downstream from the mine. The quality of these waters directly affects the recreational, aesthetic and environmental interests of certain members of Tennessee Riverkeeper. The recreational, aesthetic, and environmental interests of certain of Tennessee Riverkeeper’s members have been, are being, and will be adversely affected by the Defendant’s continued violation of the NPDES permit, Alabama NPDES rules, the AWPCA and the FWPCA as alleged in this complaint.
11. Members of Tennessee Riverkeeper now recreate less on Bear Creek because of the Defendant’s illegal discharges. The violations alleged herein have had a detrimental

impact on those members' interests because the violations have adversely affected and/or diminished aquatic life in Bear Creek and have made Bear Creek less suitable for fishing, boating, wading, walking, observing nature, or relaxing. Said members would recreate more in and around Bear Creek but for Defendant's illegal discharges of pollution. Said members will recreate more often in or near Bear Creek once the Defendant's illegal discharges cease.

COUNT ONE

12. The Plaintiff hereby repeats, realleges, adopts, and incorporates by reference paragraphs 1 through 11 herein above as if fully set out in this count.
13. The State of Alabama, acting through ADEM, has implemented a federally authorized system for regulating the discharge of pollutants to waters of the state that operates in lieu of, or in conjunction with, the federal water pollution control program (see U.S.C. § 1342 (b)).
14. The State of Alabama has issued to Hope Coal Company NPDES permit number AL0078280 which authorizes the permit holder to discharge from various outfalls, including Outfalls 013, 014, and 015 into Allen Mill Creek, and Outfall 016 into Butler Falls Branch, all subject to the following general limitations: Iron (Fe), Total, a monthly average of 3.0 mg/L, and a daily maximum of 6.0 mg/L; Manganese, Total, a monthly average of 2.0 mg/L, and a daily maximum of 4.0 mg/L; Total Suspended Solids (TSS), a monthly average of 35.0 mg/L, and a daily maximum of 70.0 mg/L; and pH, a daily minimum of 6.0 s.u. and a daily maximum of 9.0 s.u.
15. Hope Coal Co., Inc. is in violation of the provisions referenced above by operating Meredyth Mine in a manner which discharges pollutants to waters of the United States

and waters of the state in excess of the limitations specified in the permit. These activities include, but are not limited to, the specific incidents and problems described below.

16. The Defendant has violated its permit, Alabama NPDES rules, the AWPCA and the FWPCA by exceeding discharge limitations on the following occasions:

Date	Outfall	Parameter	Permit Limit	Discharge
Jun-10	14	Total Suspended Solids MO AVG	35.0 mg/L	39.0 mg/L
May-10	16	Total Suspended Solids MO AVG	35.0 mg/L	39.0 mg/L
May-10	16	Iron (Fe) MO AVG	3.0 mg/L	4.385 mg/L
Apr-10	16	Total Suspended Solids MO AVG	35.0 mg/L	44 mg/L
Apr-10	16	Iron (Fe) MO AVG	3.0 mg/L	4.33 mg/L
Mar-10	16	Total Suspended Solids DAILY MAX	70.0 mg/L	80mg/L
Mar-10	16	Total Suspended Solids DAILY MAX	70.0 mg/L	144 mg/L
Mar-10	16	Total Suspended Solids MO AVG	35.0 mg/L	112.0 mg/L
Mar-10	16	Total Iron MO AVG	3.0 mg/L	4.695 mg/L
Feb-10	16	Total Suspended Solids MO AVG	35.0 mg/L	53.0 mg/L
Feb-10	15	Total Suspended Solids DAILY MAX	70.0 mg/L	236 mg/L
Feb-10	15	Total Suspended Solids MO AVG	35.0 mg/L	124.0 mg/L
Feb-10	15	Total Iron DAILY MAX	6.0 mg/L	6.93 mg/L
Jan-10	16	Total Suspended Solids DAILY MAX	70.0 mg/L	108 mg/L
Jan-10	16	Total Suspended Solids DAILY MAX	70.0 mg/L	116 mg/L
Jan-10	16	Total Suspended Solids MO AVG	35 mg/L	112.0 mg/L
Jan-10	16	Total Iron MO AVG	3.0 mg/L	5.560 mg/L
Jan-10	15	Total Suspended Solids MO AVG	35 mg/L	60 mg/L
Jan-10	14	Total Suspended Solids DAILY MAX	70 mg/L	104 mg/L
Jan-10	14	Total Suspended Solids MO AVG	35 mg/L	104 mg/L
Jan-10	13	Total Suspended Solids MO AVG	35 mg/L	38.0 mg/L
Dec-09	16	Total Suspended Solids DAILY MAX	70.0 mg/L	144 mg/L
Dec-09	16	Total Suspended Solids MO AVG	35.0 mg/L	104 mg/L
Dec-09	16	Total Iron DAILY MAX	6.0 mg/L	8.21 mg/L
Dec-09	16	Total Iron MO AVG	3.0 mg/L	6.875 mg/L
Dec-09	14	Total Suspended Solids DAILY MAX	70.0 mg/L	240 mg/L
Dec-09	14	Total Suspended Solids MO AVG	35.0 mg/L	240 mg/L
Dec-09	14	Total Iron DAILY MAX	6.0 mg/L	10.74 mg/L
Dec-09	14	Total Iron MO AVG	3.0 mg/L	10.74 mg/L
Nov-09	16	Total Suspended Solids MO AVG	35.0 mg/L	38.5 mg/L
Nov-09	16	Total Iron DAILY MAX	6.0 mg/L	7.09 mg/L

Nov-09	16	Total Iron MO AVG	3.0 mg/L	6.460 mg/L
Nov-09	15	Total Suspended Solids MO AVG	35.0 mg/L	40 mg/L
Nov-09	13	Total Suspended Solids MO AVG	35.0 mg/L	38.5 mg/L
Oct-09	16	Total Suspended Solids DAILY MAX	70.0 mg/L	208 mg/L
Oct-09	16	Total Suspended Solids MO AVG	35.0 mg/L	118.5 mg/L
Oct-09	16	Total Iron DAILY MAX	6.0 mg/L	7.72 mg/L
Oct-09	16	Total Iron MO AVG	3.0 mg/L	4.090 mg/L
Oct-09	14	Total Suspended Solids DAILY MAX	70.0 mg/L	192 mg/L
Oct-09	14	Total Suspended Solids DAILY MAX	70.0 mg/L	876 mg/L
Oct-09	14	Total Suspended Solids MO AVG	35.0 mg/L	534.0 mg/L
Oct-09	14	Total Iron DAILY MAX	6.0 mg/L	7.98 mg/L
Oct-09	14	Total Iron DAILY MAX	6.0 mg/L	20.75 mg/L
Oct-09	14	Total Iron MO AVG	3.0 mg/L	14.365 mg/L
Oct-09	13	Total Suspended Solids DAILY MAX	70.0 mg/L	81 mg/L
Oct-09	13	Total Suspended Solids MO AVG	35.0 mg/L	58 mg/L
Sep-09	15	Total Suspended Solids DAILY MAX	70.0 mg/L	292 mg/L
Sep-09	15	Total Suspended Solids MO AVG	35.0 mg/L	292 mg/L
Sep-09	15	Total Iron MO AVG	3.0 mg/L	5.18 mg/L
Sep-09	14	Total Suspended Solids MO AVG	35.0 mg/L	36 mg/L
Sep-09	13	Total Suspended Solids DAILY MAX	70.0 mg/L	832 mg/L
Sep-09	13	Total Suspended Solids MO AVG	35.0 mg/L	832 mg/L
Sep-09	13	Total Iron DAILY MAX	6.0 mg/L	12.62 mg/L
Sep-09	13	Total Iron MO AVG	3.0 mg/L	12.62 mg/L
Aug-09	13	Total Iron MO AVG	3.0 mg/L	3.35 mg/L
Jul-09	15	Total Suspended Solids MO AVG	35.0 mg/L	36 mg/L
Jul-09	13	Total Suspended Solids DAILY MAX	70.0 mg/L	114 mg/L
Jul-09	13	Total Suspended Solids MO AVG	35.0 mg/L	114 mg/L
Jul-09	13	Total Iron MO AVG	3.0 mg/L	5.58 mg/L
Jun-09	13	Total Suspended Solids MO AVG	35.0 mg/L	43 mg/L
May-09	13	Total Suspended Solids DAILY MAX	70.0 mg/L	96 mg/L
May-09	13	Total Suspended Solids MO AVG	35.0 mg/L	59.5 mg/L
May-09	13	Total Iron MO AVG	3.0 mg/L	3.33 mg/L
Apr-09	16	Total Suspended Solids MO AVG	35.0 mg/L	51 mg/L
Apr-09	16	Total Iron MO AVG	3.0 mg/L	4.07 mg/L
Apr-09	15	Total Suspended Solids MO AVG	35.0 mg/L	42 mg/L
Apr-09	13	Total Suspended Solids DAILY MAX	70.0 mg/L	94 mg/L
Apr-09	13	Total Suspended Solids MO AVG	35.0 mg/L	73 mg/L
Apr-09	13	Total Iron DAILY MAX	6.0 mg/L	7.66 mg/L
Apr-09	13	Total Iron MO AVG	3.0 mg/L	4.55 mg/L

Mar-09	16	Total Suspended Solids DAILY MAX	70.0 mg/L	244 mg/L
Mar-09	16	Total Suspended Solids DAILY MAX	70.0 mg/L	78 mg/L
Mar-09	16	Total Suspended Solids MO AVG	35.0 mg/L	161 mg/L
Mar-09	16	Total Iron DAILY MAX	6.0 mg/L	7.11 mg/L
Mar-09	16	Total Iron MO AVG	3.0 mg/L	4.84 mg/L
Mar-09	15	Total Suspended Solids DAILY MAX	70.0 mg/L	94 mg/L
Mar-09	15	Total Suspended Solids MO AVG	35.0 mg/L	68 mg/L
Mar-09	13	Total Suspended Solids MO AVG	35.0 mg/L	43.5 mg/L
Feb-09	16	Total Suspended Solids DAILY MAX	70.0 mg/L	156 mg/L
Feb-09	16	Total Suspended Solids MO AVG	35.0 mg/L	156 mg/L
Feb-09	16	Total Iron MO AVG	3.0 mg/L	5.33 mg/L
Feb-09	13	Total Suspended Solids MO AVG	35.0 mg/L	51 mg/L
Jan-09	16	Total Suspended Solids DAILY MAX	70.0 mg/L	204 mg/L
Jan-09	16	Total Suspended Solids MO AVG	35.0 mg/L	204 mg/L
Jan-09	16	Total Iron DAILY MAX	6.0 mg/L	9 mg/L
Jan-09	16	Total Iron MO AVG	3.0 mg/L	9 mg/L
Jan-09	15	Total Suspended Solids DAILY MAX	70.0 mg/L	85 mg/L
Jan-09	15	Total Suspended Solids MO AVG	35.0 mg/L	85 mg/L
Jan-09	13	Total Suspended Solids DAILY MAX	70.0 mg/L	72 mg/L
Jan-09	13	Total Suspended Solids DAILY MAX	70.0 mg/L	73 mg/L
Jan-09	13	Total Suspended Solids MO AVG	35.0 mg/L	72.5 mg/L
Jan-09	13	Total Iron MO AVG	3.0 mg/L	4.24 mg/L
Dec-08	16	Total Suspended Solids DAILY MAX	70.0 mg/L	70 mg/L
Dec-08	16	Total Suspended Solids MO AVG	35.0 mg/L	70 mg/L
Dec-08	16	Total Iron DAILY MAX	6.0 mg/L	13.95 mg/L
Dec-08	16	Total Iron MO AVG	3.0 mg/L	13.95 mg/L
Dec-08	15	Total Iron MO AVG	3.0 mg/L	3.91 mg/L
Dec-08	13	Total Suspended Solids MO AVG	35.0 mg/L	37.5 mg/L
Dec-08	13	Total Iron MO AVG	3.0 mg/L	3.67 mg/L
Nov-08	13	Total Suspended Solids MO AVG	35.0 mg/L	50 mg/L
Sep-08	13	Total Suspended Solids MO AVG	35.0 mg/L	58 mg/L
Aug-08	15	Total Suspended Solids DAILY MAX	70.0 mg/L	850 mg/L
Aug-08	15	Total Suspended Solids MO AVG	35.0 mg/L	850 mg/L
Aug-08	15	Total Iron DAILY MAX	6.0 mg/L	7.11 mg/L
Aug-08	15	Total Iron MO AVG	3.0 mg/L	7.11 mg/L
Aug-08	13	Total Suspended Solids DAILY MAX	70.0 mg/L	147 mg/L
Aug-08	13	Total Suspended Solids MO AVG	35.0 mg/L	147 mg/L

17. The violations set out in this count are continuing and ongoing and there is a reasonable likelihood that Defendant will continue these or similar violations in the future.
18. These violations have an adverse impact on waters of the United States and waters of the state, on Bear Creek and tributaries of Bear Creek, on Tennessee River and on the recreational, aesthetic, and environmental interests of the Plaintiff's members in those waterways as set out in paragraphs 10 and 11 herein above.

COUNT TWO

19. The Plaintiff hereby repeats, realleges, adopts, and incorporates by reference paragraphs 1 through 18 herein above as if fully set out in this count.
20. The violations set out herein will continue unless this Court enjoins Defendant.
21. These violations have caused irreparable injury to some of Plaintiff's members. Plaintiff has no adequate remedy at law for the injuries caused to its members by Defendant's ongoing violations in that Plaintiff would be forced to bring repeated and burdensome actions for each new injury to its interests if Defendant's ongoing violations are not enjoined.
22. An injunction will be in the public's interest in this case. Because Defendant is in continuing violation of the law, the equities for an injunction weigh in Plaintiff's favor.
23. Therefore, Plaintiff brings this cause of action to enjoin Defendant from engaging in any other affirmative act or conduct which would contribute to further permit violations.

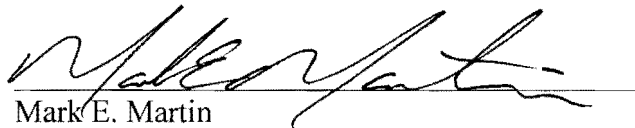
PRAYER FOR RELIEF

- A. Plaintiff requests the Court render a judgment finding and declaring that Defendant has violated the NPDES permit, Alabama NPDES rules, the AWPCA and/or the FWPCA in

the manner and on the dates alleged in Count One herein and that such violations are illegal and that Defendant is liable for all such violations.

- B. Plaintiff requests and petitions this Court to enjoin the violations and any and all illegal conduct by Defendant set out and alleged in Count One herein.
- C. Plaintiff requests and petitions this Court to assess a \$37,500.00 (thirty-seven thousand, five hundred dollars) civil penalty (*see*, 40 CFR 19) against Defendant for each violation and each day of continuing violation for which Defendant is found liable.
- D. Plaintiff further requests a judgment for all costs and for attorney fees as are reasonable under the circumstances.
- E. Plaintiff prays for such other, further or more general relief as this Court may deem appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark E. Martin', is written over a horizontal line.

Mark E. Martin

Bar Number: ASB-9361-A41M

Attorney for Plaintiff, Tennessee Riverkeeper, Inc.

P.O. Box 1486

Oneonta, AL 35121

(205) 516-9350

E-mail: mmartin@markemartin.com