

## Groups Issue Intent to File Citizen Suit Against W.Va. Mining Company

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Following a report detailing mining-related pollution of two streams, three West Virginia organizations sent a notice of intent to file a civil lawsuit against a coal company with facilities near the streams.

According to a report from Morgantown-based Downstream Strategies, coal combustion wastes and acid mine drainage are at levels in excess of water quality standards at Crafts Run and Robinson Run. The findings point to Mepco coal mining and refuse disposal operations as the source for pollution, which the report claims generally increases as Crafts Run flows downstream.



The company however, claims the pollution is coming from abandoned mines.

Both streams are located near Madsville, just a few miles north of Morgantown, beside the Pennsylvania border. Robinson Run drains into the Monongahela River.

Evan Hansen, president of Downstream Strategies, said the consulting firm tested for pollution from acid mine drainage and coal combustion waste. They also tested conductivity in the streams.

"In terms of coal combustion wastes, we found some high concentrations of arsenic and selenium," Hansen said. "Those can impact aquatic life."

Coal combustion wastes are the remains of coal burned at electric power plants. The waste, which is alkaline, can be used to treat acid mine drainage, but it also contains toxic materials such as arsenic and selenium.

The streams are near the Dunkard Creek watershed. Consol Energy recently agreed to pay more than \$205 million in federal fines and cleanup costs after an algae bloom killed off much of aquatic life in that stream.

The notice of intent to file a citizen suit comes from the Sierra Club, the West Virginia Highlands Conservancy and the Fort Martin Community Association. The groups are represented by attorneys [Richard Webster of Public Justice](#) and Mike Becher of Appalachian Mountain Advocates.

The letter notifies sibling companies Coresco and Mepco, that if the streams are not cleaned up within 60 days, the groups plan to file a lawsuit alleging several violations of the Clean Water Act.

Coresco would also be accused of violations of the Surface Mining Control and Reclamation Act. Coresco operates the sites alleged to be the sources of pollution on Mepco property. Both companies are subsidiaries of Mepco International Holdings.

James Laurita, president and CEO of Mepco, said the claims in the letter are "ridiculous." He said he was not concerned about the allegations, which he says are without merit.

"By and large, the allegations are unfounded," Laurita said. "... We will be able to demonstrate that I have done nothing but improve Crafts Run since I've been involved with these operations for many decades now. We've reclaimed miles and miles and miles of abandoned highwall and Crafts Run has improved in quality since we've been mining there."

Laurita said much of the aquatic life in Crafts Run is degraded as a result of pollution, but said the source of that pollution is old, orphaned mines that were on the property decades before Mepco had property there.

"They're indicating and (alleging) that those orphan mines in the Pittsburgh seam – and we don't even mine in that seam – that somehow we're responsible for them," Laurita said. "Those are, obviously they're very heavily polluted."

He said the blame for that pollution has unjustly been aimed at Mepco.

"They were mines from the turn of the century," Laurita said of the Pittsburgh seam coal mines in the area.

"We're in compliance with all of our effluent limits, have been all along," Laurita said. "There have been no exceedances of the effluent limits as set by the state."

Laurita said contending with lawsuits such as the one threatened by the three groups raises the cost to do business, and therefore electricity.

"The people that are making these allegations – there's no sitting down and working out anything with these type of people," Laurita said. "They simply are out to stop all mining. That there's agenda."

Laurita said the company was still reviewing their options and may be providing a more detailed response at a later date.

The lawsuit would be filed in U.S. District Court Northern District of West Virginia.

Pollutants presented in findings by Downstream Strategies include elevated levels of dissolved solids such as aluminum, iron and manganese, but also high levels of boron and selenium, common elements of coal combustion waste. Downstream Strategies also found several permitted outfalls that they said have discharged selenium and arsenic into Crafts Run at concentrations that exceed state surface water quality criteria.

In addition to their own sampling, Downstream Strategies looked at self-monitoring data from the dischargers that showed past violations of state criteria for dissolved aluminum, iron and pH into Robinson Run.

Hansen said the West Virginia Department of Environmental Protection has not been enforcing permit compliance based on self-reporting data.

"Enforcement of these permits is up to the DEP, but the DEP has not chosen to aggressively enforce them," he said.

Both Robinson Run and Crafts Run were listed as impaired streams for pH, aluminum, iron and manganese in 2002.

Coresco has three active National Pollutant Discharge Elimination System permits to discharge to Crafts Run and Robinson, one for a preparation plant and two for refuse disposal areas. According to the Downstream Strategies report, Coresco intends to revise its permits to allow more coal combustion and waste refuse in the Robinson Run area.

"The rationale for using it there is that it treats acid mine drainage, but if you look at the new permits that are being requested, they're basically using that site -- proposing to use that site -- as a very large landfill for coal combustion wastes," Hansen said. "In other words, they're going to pile it very high and put very large amounts there."

The suit alleges that due to action by Mepco, Crafts Run has become "biologically degraded." Sampling of the stream found that as the streams pass through property of the two companies, levels of pollution that stress animal and plant life in the streams increase.

"The pollution must originate at Coresco and Mepco because there are no other significant discharges to the stream and company data shows that the headwaters of Crafts Run are low in (total dissolved solids) and conductivity, but the concentration increases to harmful levels as the stream passes through Mepco property and past Coresco-operated refuse disposal facilities," the letter claims.

The violations, the group asserts, are believed by the groups to be ongoing violations of the Clean Water Act. If corrective actions have already been taken, the notice states, they are asking Coresco or Mepco to notify the groups threatening to sue. The letter also invites both companies to meet with the plaintiffs to attempt to resolve the issues outlined.

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