From:	Susan Bromm
To:	John Pomponio; Samantha Beers
Cc:	Mark Pollins; Kate Anderson
Subject:	Fw: WVa flood victims blame highway, Va coal company
Date:	09/21/2009 09:37 AM

Are there any violations here that might merit an enforcement response?

----- Forwarded by Susan Bromm/DC/USEPA/US on 09/21/2009 09:33 AM -----

From:	Ann Campbell/DC/USEPA/US
To:	David Evans/DC/USEPA/US, Brian Frazer/DC/USEPA/US, JamesG Gavin/DC/USEPA/US@EPA, Robert Hargrove/DC/USEPA/US@EPA, Susan Bromm/DC/USEPA/US@EPA, Stefania Shamet/R3/USEPA/US@EPA, Jeffrey Lapp/R3/USEPA/US@EPA, Jessica Martinsen/R3/USEPA/US, John Pomponio/R3/USEPA/US@EPA
Cc:	Christopher Hunter/DC/USEPA/US, Brian Topping/DC/USEPA/US@EPA, landers.timothy@epa.gov
Date:	09/21/2009 07:56 AM
Subject:	WVa flood victims blame highway, Va coal company

The AP article....

September 18, 2009

WVa flood victims blame highway, Va coal company

VICKI SMITH

Associated Press Writer

MORGANTOWN, W.Va. (AP) - A group of southern West Virginia residents has sued four coal companies over the strip mining that helped build the King Coal Highway, claiming it has contributed to devastating flooding.

Twenty families along Pigeon Creek have filed property damage cases in Mingo County Circuit Court, naming as defendants Alpha Natural Resources of Abingdon, Va., and three subsidiaries, Nicewonder Contracting, White Flame Energy and Cobra Natural Resources.

Alpha, however, denied any wrongdoing late Friday and said that it was not cited for any stormwater runoff violations after the spring flood that damaged thousands of homes.

"It was a natural disaster caused by exceedingly high rainfalls and ground saturation," said company spokesman Ted Pile, adding that 4.5 inches of rain fell between May 8 and the morning of May 9. "It was an act of God, not an act of man."

A motion filed with the lawsuits Thursday says they are the first of dozens to come, with at least 20 more expected by people who live along Mate Creek. The plaintiffs want their cases transferred to a mass litigation panel appointed by the state Supreme Court.

The lawsuits claim Alpha is taking advantage of both the highway project and legal loopholes to avoid regulations that would ordinarily require stricter flood-control measures. By building flat highway beds for the state to pave, Alpha is spared the typical burden of restoring the land to its approximate original contour after it is done mining.

State and federal laws that normally cover coal mining operations don't apply when that mining is considered incidental to highway construction.

The plaintiffs, however, argue it was the other way around: They contend the highway construction was incidental to the real goal of mining coal "without following regulations intended to protect the public from just the sort of catastrophe that occurred."

"They were going to mine the coal anyway," said plaintiffs' attorney Kevin Thompson. "This was a pretense to avoid environmental regulation."

Pile said the plaintiffs' assertion is "just not true," and that state law clearly weighs the value of the incidental coal against the overall amount of earth to be moved for the road before allowing it to proceed without the usual permits.

"The fact of the matter is, the reserves that are there on that land are unable to be developed and probably wouldn't be able to be touched unless there had been some beneficial use like the highway," he said.

VICKI SMITH
Associated Press Writer

MORGANTOWN, W.Va. (AP) - A group of southern West Virginia residents has sued four coal companies over the strip mining that helped build the King Coal Highway, claiming it has contributed to devastating flooding.

Twenty families along Pigeon Creek have filed property damage cases in Mingo County Circuit Court, naming as defendants Alpha Natural Resources of Abingdon, Va., and three subsidiaries, Nicewonder Contracting, White Flame Energy and Cobra Natural Resources.

Alpha, however, denied any wrongdoing late Friday and said that it was not cited for any stormwater runoff violations after the spring flood that damaged thousands of homes.

"It was a natural disaster caused by exceedingly high rainfalls and ground saturation," said company spokesman Ted Pile, adding that 4.5 inches of rain fell between May 8 and the morning of May 9. "It was an act of God, not an act of man."

A motion filed with the lawsuits Thursday says they are the first of dozens to come, with at least 20 more expected by people who live along Mate Creek. The plaintiffs want their cases transferred to a mass litigation panel appointed by the state Supreme Court.

The lawsuits claim Alpha is taking advantage of both the highway project and legal loopholes to avoid regulations that would ordinarily require stricter flood-control measures. By building flat highway beds for the state to pave, Alpha is spared the typical burden of restoring the land to its approximate original contour after it is done mining.

State and federal laws that normally cover coal mining operations don't apply when that mining is considered incidental to highway construction.

The plaintiffs, however, argue it was the other way around: They contend the highway construction was incidental to the real goal of mining coal "without following regulations intended to protect the public from just the sort of catastrophe that occurred."

"They were going to mine the coal anyway," said plaintiffs' attorney Kevin Thompson. "This was a pretense to avoid environmental regulation."

Pile said the plaintiffs' assertion is "just not true," and that state law clearly weighs the value of the incidental coal against the overall amount of earth to be moved for the road before allowing it to proceed without the usual permits.

"The fact of the matter is, the reserves that are there on that land are unable to be developed and probably wouldn't be able to be touched unless there had been some beneficial use like the highway," he said.

Working with Alpha on the 11-mile stretch from Red Jacket to Gilbert has saved the state $300 million and may have helped get the road built sooner, said Michael Mitchem, executive director of the King Coal/Tolsia Highway Authority in Gilbert.

"There's no way you could do it without the coal companies," he said.

Though the partnership with Alpha is the authority's first with a coal company, Mitchem said, it won't be the last. Consol Energy, based in Canonsburg, Pa., has won approval from the U.S. Environmental Protection Agency to build another 5-mile section.

The King Coal part of Highway I-73/74 will eventually be 95 miles, with about 12 miles finished by next year, Mitchem said. It will then connect with the 55-mile Tolsia Highway, which is about 10 percent built.

In about 20 years, when both parts are finished, the highway will stretch from Huntington to Williamson.

But residents like Melissa Lester, one of the Pigeon Creek plaintiffs, claim it's being built at their expense.

The lawsuits contend "inadequate or nonexistent stormwater control, failure to return the land to approximate original contour and other deviations from accepted standards of care" and argue that the practices dramatically increased peak water flows and caused severe flooding problems for people downhill.

Lester and the other plaintiffs contend Alpha knew more than a year ago that its operations were causing property damage, but did nothing. They are demanding damages for property damage, negligence, nuisance, trespass and deliberate infliction of emotional distress.

Lester, in particular, endured two floods in the spring of 2008 before the third on May 9 that destroyed her home.

That flood caused widespread damage in the southern coalfields, destroying 300 structures in Mingo County and causing damage to about 3,000. In Wyoming County, about 250 structures were damaged.

Alpha employees were among those affected, Pile said, and the company committed hundreds of labor hours to the cleanup in the weeks afterward.

Working with Alpha on the 11-mile stretch from Red Jacket to Gilbert has saved the state $300 million and may have helped get the road built sooner, said Michael Mitchem, executive director of the King Coal/Tolsia Highway Authority in Gilbert.

"There's no way you could do it without the coal companies," he said.

Though the partnership with Alpha is the authority's first with a coal company, Mitchem said, it won't be the last. Consol Energy, based in Canonsburg, Pa., has won approval from the U.S. Environmental Protection Agency to build another 5-mile section.

The King Coal part of Highway I-73/74 will eventually be 95 miles, with about 12 miles finished by next year, Mitchem said. It will then connect with the 55-mile Tolsia Highway, which is about 10 percent built.

In about 20 years, when both parts are finished, the highway will stretch from Huntington to Williamson.

But residents like Melissa Lester, one of the Pigeon Creek plaintiffs, claim it's being built at their expense.

The lawsuits contend "inadequate or nonexistent stormwater control, failure to return the land to approximate original contour and other deviations from accepted standards of care" and argue that the practices dramatically increased peak water flows and caused severe flooding problems for people downhill.

Lester and the other plaintiffs contend Alpha knew more than a year ago that its operations were causing property damage, but did nothing. They are demanding damages for property damage, negligence, nuisance, trespass and deliberate infliction of emotional distress.

Lester, in particular, endured two floods in the spring of 2008 before the third on May 9 that destroyed her home.

That flood caused widespread damage in the southern coalfields, destroying 300 structures in Mingo County and causing damage to about 3,000. In Wyoming County, about 250 structures were damaged.

Alpha employees were among those affected, Pile said, and the company committed hundreds of labor hours to the cleanup in the weeks afterward.

202-657-3117 (Mobile)
202-566-1349 (Fax)