

Before Slurry Deal, Records Outlined Massey Pollution

CHARLESTON, W.Va., June 10, 2012 /The Charleston Gazette/ In the weeks before last year's settlement of a major water pollution case, lawyers for Mingo County residents were saying they'd unearthed records indicating Massey Energy tried to cover up the extent of its underground pumping of coal-slurry waste.

Lawyers for the residents also filed court records they argued showed then-Massey CEO Don Blankenship personally pushed for the slurry injection to save \$55,000 in waste-impoundment construction costs.

Erkan Esmer, a one-time engineering consultant for Massey at its Rawl Sales & Processing Co. operations, testified about Blankenship's slurry injection decision in a legal deposition in the case, brought by hundreds of residents who allege slurry polluted their drinking water.

"Well I think Don though that \$55,000 was too much to spend and complained about that," Esmer said in a sworn statement taken during the litigation.

A transcript of Esmer's testimony during pre-trial investigation in the case is among previously unpublicized documents that were filed in the weeks before Alpha Natural Resources, which bought Massey in June 2011, settled the case brought by residents of the communities of Rawl, Lick Creek, Merrimac and Sprigg.

The lawsuit was one of two major coal-slurry actions brought in recent years by Southern West Virginia residents who allege underground injection of coal preparation plant waste has contaminated their drinking water.

Jury selection in the other case, brought against Massey by residents of the Seth and Prenter communities in Boone County, is scheduled to begin this week in Madison.

Slurry is the wastewater created at preparation plants by cleaning of raw coal before shipping the fuel to market. For decades, coal operators dumped the material in large above-ground impoundments or injected it underground, often into old mine voids.

Residents of numerous coal-field communities say mining activities, including injection of coal slurry, are to blame for discolored foul-smelling well water and a variety of health problems.

Generally, federal and state laws are meant to prohibit mining activities from damaging drinking water, and mine operators that do are required to provide replacement supplies. But in practice, regulators do not always strictly enforce those laws, and residents are forced to turn to the civil justice system.

West Virginia Department of Environmental Protection officials have said they have not found connections between slurry disposal and contaminated water, but a review by West Virginia University researchers said the DEP has required inadequate monitoring during the years to allow any real conclusions.

In the case heading for trial next week, about 350 residents are continuing to pursue claims against the former Massey Energy operations for slurry pollution in the Prenter and Seth area. Residents previously settled claims against Patriot Coal's local operations.

Boone Circuit Judge William Thompson is presiding over the trial, which will focus on personal injury and property damage claims of 14 individuals whose cases are representative of the rest of the community. The trial will also decide more broadly if all residents who sued are entitled to future medical monitoring costs to ensure early detection of any diseases linked to drinking water contaminated by the mining operations.

In the Rawl Sales case, lawyers for the residents argued that Massey opted for slurry injection over impoundment disposal or the use of a dry "filter cake" waste disposal system.

"Either of these choices, both made by Mr. Blankenship, according to witness testimony, would have spared plaintiffs from years of exposure to the tainted water and the resulting suffering," the residents' lawyer wrote in one court filing.

Esmer testified that it would have cost an additional \$55,000 to pull together additional rock and dirt for the impoundment but that Blankenship rejected that expenditure.

"He said \$55,000 is a lot of money to spend, as well, I am remembering," Esmer testified. Esmer said the decision probably led to underground slurry injection at the Rawl site continuing longer than he felt was appropriate.

Blankenship told lawyers in a separate sworn interview, taken June 2, 2011, that he did not recall a dispute over that expenditure. "I find that hard to believe but it's possible," Blankenship said. "I don't know."

Later that month, on June 27, 2011, company lawyers turned over to the plaintiffs "key maps denoting critical information about the nature and extent of their slurry injection activities – activities that are at the very core of this litigation." The residents' lawyers said in a court filing.

The residents' lawyers said these documents – requested since the early days of the lawsuit – outlines where and for how long Massey had injected slurry underground. They said maps and a diagram, discovered in a "map vault" at a Massey site in Sidney, Ky., showed the company had pumped slurry underground at more and different locations and for longer periods of time, indicating "the massive scale of their slurry injection program," as opposed to the "limited" injection the company described.

"This last-minute production has exploded the lid off Pandora's Box with myriad wide-reaching impacts," the residents' lawyers said in the July 1, 2011 court filing.

In a response filed a week later, on July 8, company lawyers disputed the residents' "scathing allegations" and said some of the information on the new maps and diagram was previously available to the plaintiffs.

Three weeks later, after a marathon mediation session – the third such mediation effort – the company agreed to settle the lawsuit. The Associated Press later reported that Massey would pay \$35 million on top of \$5 million Massey previously agreed on to spend on medical monitoring for Rawl area residents.

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