

**IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA**

**SCOTT G. MANDIROLA, DIRECTOR,  
DIVISION OF WATER AND WASTE  
MANAGEMENT, AND HAROLD D. WARD,<sup>1</sup>  
ACTING DIRECTOR, DIVISION OF MINING  
AND RECLAMATION, WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,**

**Plaintiffs,**

**v.**

**Civil Action No. 13-C-13**

**UPSHUR PROPERTY, INC.,**

**Defendant.**

**CONSENT DECREE**

Upon agreement to the terms herein by the parties, Scott G. Mandirola, Director of the Division of Water and Waste Management and Harold D. Ward, Acting Director of the Division of Mining and Reclamation (hereinafter collectively, the “Directors”) of the West Virginia Department of Environmental Protection (hereinafter “WVDEP”) and Upshur Property, Inc. (hereinafter “Upshur”), the parties agree that it is their intent to resolve the violations of the West Virginia Water Pollution Control Act (“WPCA”), West Virginia Code §§ 22-11-1 *et seq.*, and associated violations of the West Virginia Surface Coal Mining and Reclamation Act (“WVSCMRA”), West Virginia Code §§ 22-3-1 *et seq.* (collectively, the “Acts”), and violations of the rules and regulations implementing these Acts through this Consent Decree with civil penalties and other duties imposed as expressed herein. After consideration of public comments on this Consent Decree, as proposed, and the parties’ responses thereto, the Court enters this Consent Decree.

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<sup>1</sup> Harold D. Ward has replaced Thomas L. Clarke as the Acting Director of the West Virginia Department of Environmental Protection’s Division of Mining and Reclamation.

## **I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter and the parties hereto pursuant to W. Va. Code §§ 22-11-22 and 22-3-17. Venue is proper in this Circuit Court pursuant to W. Va. Code §§ 22-11-22 and 22-3-17 because Upshur is located and doing business in this judicial circuit and because the violations of the Acts and the rules promulgated pursuant to the Acts that are the subject of this action occurred in this judicial circuit.

## **II. APPLICATION OF CONSENT DECREE**

2. This Consent Decree applies to and is binding upon WVDEP and Upshur and its successors, as both the permittee of West Virginia Water Pollution Control/National Pollutant Discharge Elimination System (hereinafter “WV/NPDES”) Permit Nos. WV0050717, WV0067881 and WV0094901 (the “NPDES Permits”)<sup>2</sup> and the permittee of Surface Mining Permits Nos. S-0057-80, P-0698-00, S-0108-82, S-0091-83 and S-0163-76 (the “SCMRA Permits”).

## **III. FINDINGS OF FACT**

3. The Directors filed a Complaint in the Circuit Court of Upshur County, West Virginia against Upshur as set forth above in the caption of this Consent Decree. The Complaint alleges that Upshur violated the WPCA and the WVSCMRA through discharges of pollutants from its mining facilities in Upshur County, West Virginia, which are covered by the NPDES Permits. The SCMRA Permits authorize surface mining and related activities at the mines and the NPDES Permits authorize discharges from the mines.

### **Statutory and Regulatory Background**

4. WVDEP issued the NPDES Permits pursuant to its authority under the WPCA and pursuant to authority delegated to the WVDEP by the United States Environmental Protection Agency

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<sup>2</sup> WV/NPDES Permit Nos. WV0050717 and WV0067881 will be combined into a single permit upon their pending reissuance.

("USEPA") under the federal Clean Water Act, 33 U.S.C. § 1342, and pursuant to a Memorandum of Agreement between the WVDEP and USEPA for the issuance of NPDES permits dated May 10, 1982.

5. The NPDES Permits contain limits on the concentrations of certain pollutants that can be discharged in the effluent from the mine.

6. Upshur has reported the quality of its discharges and other information to the WVDEP pursuant to the terms and conditions of the NPDES Permits. This reporting has occurred through submittal of Discharge Monitoring Reports (hereinafter "DMRs") as prescribed by the WVDEP.

7. Upshur's mining operations are also covered by the SCMRA Permits, which the WVDEP issued on July 31, 1976 (S-0163-76), June 24, 1980 (S-0057-80), January 18, 1981 (P-0698-00), November 1, 1982 (S-0108-82), and November 14, 1983 (S-0091-83).

8. The WVDEP issued the SCMRA Permits pursuant to its authority under the WVSCMRA and its status as the primary and exclusive regulator of coal mining in West Virginia. The exclusive regulatory jurisdiction under surface mining law is the result of the United States' Office of Surface Mining ("OSM") approval of the state's regulatory program in January 1981. WVDEP obtained its regulatory primacy by passing a law, WVSCMRA, which met or exceeded the minimum national standards established by Congress and by demonstrating its capacity to enforce its law. *See* 30 C.F.R. §§ 732.12 and 948.10.

9. The rules promulgated by the WVDEP implementing WVSCMRA prohibit violations of effluent limitations contained in the NPDES Permits and prohibit violations of applicable water quality standards. *See* W. Va. Code R. § 38-2-14.5.b. The monitoring frequency and effluent limitations are governed by standards set forth in the NPDES Permits.

### **Violations of Effluent Limits**

10. The WVDEP's review of DMRs submitted by Upshur for the period from January 1, 2007 through December 31, 2013 identified results reported in excess of the Permits' stated effluent limits for several pollutants, including aluminum, manganese and iron.

11. The specific violations at issue in this litigation and as reported on DMRs are attached as Appendix 1 and incorporated herein by reference.

### **Factual Background**

12. Arch Coal, Inc. ("Arch") is the indirect owner of Upshur. Prior to Arch's involvement with the Permits, the WVDEP initiated an investigation related to DMR violations for aluminum and other pollutants. The agency's permitting and enforcement staff invested time and resources on evaluation of these discharges, and particularly evaluation of discharges from the centralized treatment system ("CTS") (Outlet 017 on WV/NPDES Permit No. WV0067881. The CTS was ordered to be constructed in the 1980s by the West Virginia Division of Natural Resources and the West Virginia Division of Energy for the treatment of acid mine drainage. The CTS—a 43-acre treatment structure—was built in the headwaters of Tenmile Creek. The CTS has a complex history, and has been the subject of litigation and prior orders of the WVDEP and its predecessor agencies.

13. Subsequent to the construction of the CTS, more stringent aluminum discharge limitations were added to the NPDES Permits for the CTS outlet as well as other outlets. Prior to Arch's involvement, the WVDEP was in the process of evaluating a request for permit modification related to certain of the more stringent aluminum effluent limitations, and the permittee was also evaluating technologies for improved aluminum removal.

14. On June 15, 2011, prior to a conclusion of WVDEP's evaluation and negotiation with the prior holder of the NPDES Permits, Arch acquired by merger all of the outstanding shares of

common stock International Coal Group, Inc. Pursuant to that transaction, Upshur became an indirect wholly owned subsidiary of Arch.

15. The properties at issue in the instant litigation were a part of this acquisition. Since the acquisition, Arch has proactively undertaken numerous improvements and upgrades to the facilities covered by the NPDES Permits to improve environmental conditions, including the quality of any discharges from the Permits, as well as operations related to water treatment and management.

16. More specifically, Arch's efforts since July 2011 include (a) upgrading pumping systems (for Perry Pond and Coffey A), (b) upgrading other pumps, pumping equipment, lines and infrastructure, (c) cleaning ponds (including dredging of the large valley fill pond, slurry pond, and Perry ponds), (d) re-routing certain pumped discharges, (e) undertaking short paper fiber placement as an amendment at the coarse refuse and old plant locations, (f) dredging Coffey B at the CTS, and (g) adding equipment, personnel, and training focused on environmental improvement and compliance. Arch also has created and staffed the position of General Manager of the Buckhannon/Idle Properties, a position that reports directly to the Vice President of the Northern Appalachia Region. This position was created to improve the focus on environmental compliance, planning and performance at non-producing properties, including the Upshur properties that are the subject of this litigation.

17. Arch's expenditures for these efforts total approximately \$1,724,976 as of December 2013. *See Appendix A hereto.*

18. While the upgrades undertaken by Arch as set forth above have resulted in a marked improvement in water quality at the Upshur properties since Arch's acquisition, additional measures are required to achieve consistent compliance with all applicable discharge limitations in the NPDES Permits. Arch has conferred with WVDEP regarding its ongoing efforts, and has

demonstrated to the agency its willingness to take the steps necessary to resolve any remaining compliance issues on the Permits, as well as to resolve WVDEP's claims related to past or ongoing violations.

#### IV. EFFECT OF SETTLEMENT

19. The parties recognize the time, resources, expense and complexity associated with litigating the multiple claims asserted by the WVDEP, and as to which Upshur has asserted multiple defenses, and further agree that the environmental benefit of an expeditious settlement of this civil action is in the best interest of the parties. As noted in Paragraph 23 below, WVDEP is releasing all of its rights to assert a claim, now and in the future, related to any claims asserted in the Complaint for the NPDES Permits and the SCMRA Permits and associated performance standards from January 1, 2007 through December 31, 2013. The civil penalty assessed by the Court in this Consent Decree reflects the WVDEP's belief that it could prove violations of effluent limits and other allegations raised in the Complaint as well as Upshur's belief that the defenses raised in response to those allegations would have eliminated or mitigated any penalty assessment.

20. For the purposes of this Consent Decree, Upshur agrees the Complaint states claims upon which relief can be granted.

21. The parties agree that the civil penalties to be paid by Upshur pursuant hereto satisfy all claims that may be asserted for civil penalties under the Acts for the discharge of any pollutant regulated by the NPDES Permits from January 1, 2007 through December 31, 2013.

22. The WVDEP has evaluated the DMRs for all permitted outlets, agency records regarding the NPDES Permits, and other related information and has completed an evaluation of Upshur's compliance record.

23. This Consent Decree shall act as a bar, full accord and satisfaction and have the effect of *res judicata* for any claim or cause of action brought or that may have been brought, including injunctive relief, for known violations of the NPDES Permits and the associated violations of the SCMRA Permits and associated performance standards, or violations of water quality standards, during the period from January 1, 2007 through December 31, 2013 pursuant to 33 U.S.C. § 1365(a)(1)(A) and 30 U.S.C § 1270. SCMRA Permit violations, if any, that are not violations associated with the NPDES Permit violations resolved herein are not settled or resolved by this Consent Decree.

#### V. ORDER FOR COMPLIANCE

24. Now, therefore, in accordance with Chapter 22, Article 11, Section 1, *et seq.*, and Chapter 22, Article 3, Section 1, *et seq.*, of the West Virginia Code, it is hereby agreed between the parties and ORDERED by the Court that Upshur shall (i) immediately take measures to initiate compliance with all effluent limits in the NPDES Permits, and (ii) engage in the following corrective action plan to achieve compliance at Outlet 002 on WV/NPDES Permit No. WV0050717, Outlets 002, 008 and 017 on WV/NPDES Permit No. WV0067881, and Outlet 003 on WV/NPDES Permit No. WV0094901, as well as to implement site-wide projects designed to improve water quality and overall future permit compliance:

- a. To minimize contact with and to divert freshwater upland drainage away from acid-producing material, Upshur shall construct a conveyance around the perimeter of the coarse refuse area (WV/NPDES Permit No. WV0050717, SCMRA Permit No. P-0698-00) in accordance with the requirements and schedule set forth in Exhibit A to this Consent Decree. In addition, Upshur shall place four feet or more of appropriate cover material over portions of the coarse refuse area, which when completed will result in the

completion of re-grading on WV/NPDES Permit No. WV0050717 except for the impoundment. This project is anticipated to result in water quality improvements in the Tenmile Creek watershed, including improved quality of discharges from Outlet 002 of WV/NPDES Permit No. WV0050717.

- b. In accordance with the requirements and schedule set forth in Exhibit B to this Consent Decree, Upshur shall design and construct a pilot scale passive treatment bioreactor at a location removed from jurisdictional waters. This pilot project will be monitored, including inflow and effluent flow rates and relevant water chemistry, to determine the potential for use of such technology on the site, including but not limited to Outlets 002, 008 and 017 on WV/NPDES Permit No. WV0067881. During the evaluation of this pilot system, Upshur is authorized to make necessary adjustments to the design and operation of the system with prior written approval from the WVDEP.
- c. In accordance with the requirements, schedule and other information set forth in Exhibit C to this Consent Decree, Upshur shall (1) evaluate the upgraded pumping and collection systems and surface flow characteristics on the site, and (2) submit a plan to the WVDEP for either (i) the expansion of the retention capacity of existing structures, (ii) the diversion and isolation of surface runoff away from existing structures, and/or (iii) the construction of passive treatment systems to replace existing pumping and collection systems. This project is anticipated to address water quality issues on the site, including but not limited to Outlets 002, 008 and 017 on WV/NPDES Permit No. WV0067881.
- d. In accordance with the requirements and schedule set forth in Exhibit D to this Consent Decree, Upshur shall (1) implement a comprehensive diagnostic water monitoring

- program to identify precipitation-induced discharges and (2) develop a plan for stormwater and surface flow management related to precipitation-induced discharges to reduce the volumes of flows requiring treatment.
- e. In accordance with the requirements and schedule set forth in Exhibit E to this Consent Decree, Upshur shall (1) construct de-watering siphons at Outlet 003 of WV/NPDES Permit No. WV0094901, and (2) evaluate treatment or other discharge alternatives for Outlet 003, including but not limited to the evaluation of passive treatment and of the applicability of alternative hardness-based water quality criteria.
  - f. Upshur shall construct a septic system to replace a sewage treatment plant, and eliminate the discharge associated with Outlet 402 on WV/NPDES Permit No. WV0050717 no later than December 31, 2013.
  - g. To address past issues relating to the available power supply, Upshur shall construct and install connections to a separate and independent electricity distribution line serving the portions of the property situated south of Ten Mile Road no later than March 31, 2014. This installation provides an additional back-up service to the 23,000 volt segment of the job, which includes the CTS Pumps on the headwaters of Tenmile Branch along with the pumping systems for the ponds in Perry and Bennett Branch. The backup service is provided by a distribution line serving the adjacent Carter Roag facility.
  - h. To address past issues relating to the available power supply, Upshur shall construct and install connections to a separate and independent electricity distribution line serving the portions of the property situated north of Ten Mile Road no later than August 1, 2014. This will provide 4,160 volt service for the pumping systems in Smith Hollow, Lee Branch, the area near the “old” railroad trestle and the Refuse Impoundment. The

existing system will have two separate service systems to draw power from should one system go out of service. The sources of power into this system will be from the existing distribution line servicing the property or the alternative source from the adjacent Carter Roag facility.

- i. To help remediate historic stream impacts in the area of Upshur's operations, Upshur shall design and construct an appropriate number of stream improvement structures within the Tenmile Creek watershed in an area to which Upshur has property rights to perform such construction. The stream segment designated for improvement is identified on the map attached as Exhibit F to this Consent Decree. The purpose of these structures will be to reduce deposition within the segment, to create aeration areas and develop potential pools. The structures will be designed in accordance with Rosgen Stream Morphology techniques and principles. Within 60 days following the entry of this Consent Decree, Upshur shall submit a plan to WVDEP for the agency's consideration and approval setting forth a timeframe for the completion of this work as expeditiously as possible, but in accordance with any state and federal requirements that may restrict the timing of activities within the stream segment (i.e., periods of extreme low flow or fish spawning; obtaining any required permits).
- j. To help restore the pre-mining hydrology within the watershed, within 45 days following entry of this Consent Decree, Upshur shall install a valve on the pump line running from the CTS to the existing refuse impoundment. This valve will be situated on Tenmile Creek, approximately 1500 feet downstream of Outlet 017. When practical, Upshur shall discharge the pump discharge from the CTS through this valve. The

discharge at this location shall be in compliance with the interim limits established for Outlet 017 in Paragraph 28, below.

25. In accordance with the Effluent Guidelines and Standards for the Coal Mining Point Source Category set forth at 40 C.F.R. Part 434, the WVDEP agrees that mining is complete at this facility and that it meets the criteria for evaluation under Subpart E of this Part (post-mining areas).

26. The WVDEP agrees to timely process all permit modification applications submitted by Upshur in conjunction with Upshur's compliance efforts under this Decree.

#### VI. CIVIL PENALTIES

27. In settlement of the WVDEP's claims in its Complaint relating to any and all reported violations of the WPCA and NPDES Permits and WVSCMRA and the SCMRA Permits for relief under W. Va. Code §§ 22-11-22 and 22-3-17, Upshur, without admitting liability for any alleged violations or agreeing to the appropriateness of the civil penalty expressed herein except in the context of this Consent Decree, agrees for purposes of the settlement provided herein that it shall pay a total civil penalty of Five Hundred Twenty-Five Thousand, Three Hundred Sixty-Seven Dollars (\$525,367.00). This civil penalty reflects consideration by the WVDEP of relevant civil penalty assessment factors, including but not limited to deviation from requirements, potential harm to the environment, and history of compliance, and evaluation of economic benefit received, as set forth below.

- a. Upshur shall pay a total cash penalty of Five Hundred Twenty-Five Thousand, Three Hundred Sixty-Seven Dollars (\$525,367.00) by certified or cashier's check to the WVDEP for deposit in the Division of Mining and Reclamation Operational Fund, payable within 60 days of the entry of this Decree.

- b. An evaluation of the site revealed that limitations contained in existing WV/NPDES permits restricted the permittee's ability to divert non-toxic upland flow, resulting in the gross overtreatment of the discharges from the operation and worsening the adverse impacts to the receiving streams. For years, these limitations resulted in chemical and pump costs that routinely exceeded \$1M annually, negating any possible economic benefit to the permittee.
- c. Payments shall be mailed to the following address:

John Vernon, Assistant Director  
 West Virginia Department of Environmental Protection  
 Division of Mining and Reclamation, Inspection and Enforcement Unit  
 601 57<sup>th</sup> Street SE  
 Charleston, WV 25304

**VII. INTERIM LIMITS**

28. Upshur shall be assigned and comply with the following interim limitations leading to compliance with the final discharge limitations established by the NPDES Permits:

- a. For aluminum at Outlets 002, 008 and 017 on WV/NPDES Permit WV0067881 and Outlet 002 on WV/NPDES Permit No. WV0050717:

<b>Outlet</b>	<b>Phase I Interim Limits Entry date of Decree to October 31, 2015</b>	<b>Phase II Interim Limits November 1, 2015 to December 31, 2016</b>	<b>Phase III Interim Limits January 1, 2017 to October 1, 2017</b>
<b>WV0067881 002</b>	3 mg/l – daily maximum 1.5 mg/l – monthly average	2 mg/l – daily maximum 1.25 mg/l – monthly average	1 mg/l – daily maximum 0.50 mg/l – monthly average
<b>WV0067881 008</b>	2.3 mg/l – daily maximum 1.6 mg/l – monthly average	1.6 mg/l – daily maximum 1.0 mg/l – monthly average	1 mg/l – daily maximum 0.70 mg/l – monthly average
<b>WV0067881 017</b>	1.7 mg/l – daily maximum 1.3 mg/l – monthly average	1.2 mg/l – daily maximum 0.90 mg/l – monthly average	1.0 mg/l – daily maximum 0.70 mg/l – monthly average

Outlet	Phase I Interim Limits Entry date of Decree to October 31, 2015	Phase II Interim Limits November 1, 2015 to December 31, 2016	Phase III Interim Limits January 1, 2017 to October 1, 2017
WV0050717 002	1 mg/l – daily maximum 0.8 mg/l – monthly average	0.90 mg/l – daily maximum 0.65 mg/l – monthly average	0.80 mg/l – daily maximum 0.50 mg/l – monthly average

In the event that WVDEP promulgates and USEPA approves hardness-based water quality criteria for aluminum, or in the event of the approval of a site-specific criterion for aluminum for this location, while the above interim limits are in effect, WVDEP shall adjust these interim limits for consistency with such new criteria through an administrative order without leave of the Court.

- b. For manganese at all outlets on WV/NPDES Permit Nos. WV0067881 and WV0050717, the interim limits shall be “Report Only” for both the monthly average and the daily maximum.

29. The WVDEP shall enforce the interim limits contained in Paragraph 28 through the stipulated penalties set forth in Paragraph 31 below. The interim limits in Paragraph 28 will terminate on October 1, 2017 or upon reissuance of the relevant Permit, whichever occurs earlier.

30. For all other parameters and outlets, the WVDEP shall enforce the final effective limits listed in the applicable NPDES Permits.

### VIII. STIPULATED PENALTIES

31. In the event that Upshur violates any interim limit described in Paragraph 28, Upshur shall be obligated to pay the following stipulated penalties to the WVDEP:

- a. For the violation of an interim daily maximum limit, Upshur shall pay \$1,000 per violation. For the second consecutive violation of an interim daily maximum limit for the same parameter at the same outlet that does not show a reduction in concentration

from the first violation, Upshur shall pay \$2,000. For the third consecutive and subsequent violations that do not show a reduction in concentration from the previous violation of the interim limit, Upshur shall pay \$3,000. Consecutive violations that evidence reductions in concentration from the previous violation shall be assessed a stipulated penalty of \$1,000.

- b. For the violation of an interim monthly average limit, Upshur shall pay \$2,500. For the second consecutive violation of an interim monthly average limit for the same parameter at the same outlet that does not show a reduction in concentration from the first violation, Upshur shall pay \$4,500. For the third consecutive and subsequent violations which do not show a reduction in concentration from the previous violation of the interim monthly average limit, Upshur shall pay \$6,000. Consecutive violations that evidence reductions in concentration from the previous violation shall be assessed a stipulated penalty of \$2,500.

32. The schedule of stipulated penalties provided in Paragraph 31 shall be effective from the entry date of this Consent Decree through October 1, 2017 or upon reissuance of the relevant Permit, whichever occurs earlier.

33. For failure to take or complete any step outlined in the corrective action plan set forth in Paragraph 24(ii) herein, to submit any payment as required by Paragraph 27 herein, or to submit any report as required by Paragraph 37 herein, Upshur shall be obligated to pay the following stipulated penalties to the WVDEP:

- a. For the 1<sup>st</sup> through 15<sup>th</sup> day of noncompliance, Upshur shall pay \$500 per day per violation;

- b. For the 16<sup>th</sup> through 30<sup>th</sup> day of noncompliance, Upshur shall pay \$750 per day per violation; and
- c. For any period of noncompliance after the 30<sup>th</sup> day, Upshur shall pay \$1,000 per day per violation.

34. The following stipulated penalties shall apply to any exceedance of the final effluent limitations for the outlets and parameters included in the Permits that occur from January 1, 2014 through the entry of this Consent Decree: one thousand dollars (\$1,000) per violation of any daily maximum discharge limitation; and two thousand five hundred dollars (\$2,500) per violation of any monthly average discharge limitation.

35. During the term of this Consent Decree, the following stipulated penalties shall apply to (a) any violation of a final effective discharge limitation in the NPDES Permits for any outlet or parameter not subject to the interim limits set forth in Paragraph 28, and (b) any violation of a final effective discharge limitation for any outlet or parameter subject to the interim limits set forth in Paragraph 28 after the termination of such interim limits pursuant to Paragraph 32:

- a. For the first three exceedances of the same daily maximum limit for a parameter at the same outfall, Upshur shall pay \$1,000 per violation.
- b. For the fourth through the sixth exceedances of the same daily maximum limit for a parameter at the same outfall, Upshur shall pay \$1,500 per violation.
- c. For the seventh through the ninth exceedances of the same daily maximum limit for a parameter at the same outfall, Upshur shall pay \$2,000 per violation.
- d. For the tenth and all subsequent exceedances of the same daily maximum limit for a parameter at the same outfall, Upshur shall pay \$3,000 per violation.

- e. For the first three exceedances of the same monthly average limit for a parameter at the same outfall, Upshur shall pay \$2,500 per violation.
  - f. For the fourth through the sixth exceedances of the same monthly average limit for a parameter at the same outfall, Upshur shall pay \$3,000 per violation.
  - g. For the seventh through the ninth exceedances of the same monthly average limit for a parameter at the same outfall, Upshur shall pay \$3,500 per violation.
  - h. For the tenth and all subsequent exceedances of the same monthly average limit for a parameter at the same outfall, Upshur shall pay \$5,000 per violation.
36. Stipulated penalties shall be payable within thirty (30) days of receipt of a written demand from the WVDEP. Such payments shall be made by certified or cashier's check payable to the West Virginia Department of Environmental Protection and delivered to the address specified in Paragraph 27.b for deposit in the Division of Mining and Reclamation Operational Fund.

### IX. REPORTS

37. Upshur shall provide WVDEP with quarterly reports on the status of its obligations and the activities undertaken pursuant to the corrective action plan in the Order for Compliance under this Consent Decree until all measures described therein are completed. These quarterly reports also shall include a summary of the sampling results above the interim limits for each parameter at each Outlet listed in Paragraph 24(ii). The quarterly reports shall indicate what has been accomplished since the submittal of the prior compliance report, whether Upshur is on the schedule required by this Consent Decree or, if not on schedule, an explanation of why Upshur is behind schedule, how far it is behind schedule, and what measures are being taken to get back on schedule. Each quarterly report shall be submitted to WVDEP beginning twenty days after the close of each calendar quarter until all the conditions set forth in Paragraph 45 are satisfied.

## X. FORCE MAJEURE

38. If any event occurs that causes or may cause a violation of any provision of this Consent Decree by Upshur, Upshur shall notify the WVDEP in writing within ten (10) days of the date on which it had knowledge or should have had knowledge that the event may or will cause a violation. Writing may include the use of electronic mail at an e-mail address provided for the Assistant Director of the Division of Mining and Reclamation – Inspection and Enforcement. The notice shall describe the anticipated duration of the violation, the precise cause or causes of the violation, the measures taken and/or to be taken by Upshur to minimize the violation, and the timetable by which those measures will be implemented. Upshur will take all measures to avoid or minimize any such violation. Upshur shall make all efforts to identify events that cause or may cause a violation of this Consent Decree.

39. If the WVDEP agrees that any violation of this Consent Decree is caused by circumstances reasonably beyond the control of Upshur, Upshur shall be excused as to that violation for the period of time the violation continues due to such circumstances. Upshur's time for performance shall be extended for a period not exceeding the delay actually resulting from such circumstances. In the event the WVDEP does not agree, then Upshur may submit the matter to this Court for resolution. The burden of proving that any delay was caused by circumstances reasonably beyond the control of Upshur and the length of such delay shall rest with Upshur. Failure by Upshur to comply with the notice requirements in Paragraph 46 shall render this paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Upshur's rights under this provision to obtain an extension of its obligations based on that incident.

40. Compliance with any requirement of this Consent Decree, by itself, shall not constitute compliance with any other requirement. Upshur must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

#### **XI. DISPUTE RESOLUTION AND RETENTION OF JURISDICTION**

41. The Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree until the Decree is terminated as set forth below. Additionally, should either party believe that the other has failed or is failing to comply with the terms of this Decree, it may petition this Court for a resolution of the issue.

#### **XII. PERMITS AND OTHER LAWS AND REGULATIONS**

42. This Consent Decree is not, and shall not be interpreted to be, a permit or modification of a permit under the WPCA, nor shall it relieve Upshur of any other obligation imposed by the WPCA, its NPDES Permits, or any permit issued under the WPCA, except as expressly provided herein, nor shall it in any way relieve Upshur of its obligation to comply with any other federal or state law or any rule or regulation in any way related to the substance of this Consent Decree. Any new permit or modification must be obtained in accordance with applicable federal and state laws.

#### **XIII. PUBLIC NOTICE**

43. The parties acknowledge and agree that final approval of this Consent Decree is subject to public notice and comment as provided in 47 C.S.R. § 30-15.2.c. Upshur shall be responsible for paying any and all fees or charges associated with the publication of a public notice regarding this Consent Decree. The public shall have at least thirty (30) days in which to make any comments on this Consent Decree and the WVDEP reserves the right to withhold or withdraw its consent or propose modifications to this Consent Decree if warranted based on comments received during the period for public comments. If the WVDEP modifies this Consent Decree in response to public

comments, Upshur may either consent to, or withhold consent to, entry of the modified Consent Decree. If the WVDEP makes no changes in response to public comments, Upshur consents to entry of this Consent Decree without further notice. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is not binding on and is of no effect on the parties.

**XIV. EFFECTIVE DATE**

44. The effective date of this Consent Decree shall be the date upon which it is entered by the Court as a final judgment and order.

**XV. TERMINATION**

45. Termination of this Consent Decree shall be by order of the Court upon application by either party, provided that all of the following conditions have been met: (1) Upshur has achieved complete compliance with all requirements of this Consent Decree; (2) Upshur has paid all civil and stipulated penalties required herein; and (3) all motions and other proceedings concerning this Consent Decree have been completed and are no longer subject to further judicial review and all relief resulting from such motions or other proceedings have been fully satisfied.

**XVI. SIGNATORIES AUTHORIZED**

Each of the signatories to this Consent Decree certifies that she or he is fully authorized to enter into the terms and conditions of this Consent Decree and to bind legally the party to the Consent Decree so represented by her or him.

It is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

We hereby consent to the entry of this Decree:

\_\_\_\_\_

\_\_\_\_\_  
Scott G. Mandirola, Director  
Division of Water and Waste Management  
West Virginia Department of Environmental Protection

\_\_\_\_\_  
Date

\_\_\_\_\_  
Harold D. Ward, Acting Director  
Division of Mining and Reclamation  
West Virginia Department of Environmental Protection

\_\_\_\_\_  
Date

\_\_\_\_\_  
Rico R. Moore (WVSB #7488)  
Office of Legal Services  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
(304) 926-0440  
*Counsel for Plaintiffs*

\_\_\_\_\_  
Date

\_\_\_\_\_  
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*Counsel for Defendant*

\_\_\_\_\_  
Date

**APPENDIX A**

**Upshur Property, Inc.  
Upgrades Since ACI Purchase**

<b>Description</b>	<b>Date Implemented</b>	<b>Expenditures (\$)</b>
Hired An Additional Employee (Afternoon Shift)	7/2011	\$45,900
New Site Truck from Kentucky Operation	7/2012	\$16,548
SPF Placement at Coarse Refuse & Old Plant Site	07/11-08/2011	\$11,259
Dredge with Dragline: Ponds at Perry , Large Valley Fill, Slurry Pond	11/12-02/13	\$72,480
Re-route Perry Pond pump discharge into Coffe A	10/2012	\$1,000
Dredge Coffe B at CTS with Mudcat Rental Dredge Boat	08/2012-12/2012	\$103,000
New Floating Platform for CTS Pumps	7/2011	\$9,000
Perry Pond Pumping System Upgrade	07/2011-07/2012	\$222,500
Coffe A Pump	05/2012	\$97,122
Trestle Pump & Water Treatment Upgrade (Line Install)	07/2011-5/2012	\$208,258
Additional Environmental Training	02/12-12/2012	
Upgrading Power System for Back-Up Electric	11/2012-Current	\$88,000
Purchase of High Volume - Medium Head Diesel Pump	12/2012	\$13,150
Cleaning of Lower Perry Pond	11/11-12-11	\$12,412
Installation of Dewatering Siphon and System Maintenance Beans Mill Outlet	5/2013	\$53,480
003 Topsoil and SPF Placement, Revegetation on Coarse Refuse Area	5/2013-11/2013	\$728,424
Construction of Pilot Scale Bioreactor	10/2013-12/2013	\$20,445
Septic System Installation and Removal of Package Treatment Plant	9/2013-11/2013	\$22,000
<b>Grand Total:</b>		<b>\$1,724,976</b>

SPF- Short Paper Fiber

CTS- Central Treatment System

**EXHIBIT B**

A. Submit plans to WVDEP for approval to construct a pilot-scale anaerobic bioreactor treatment system (i.e., passive system). The system will be located in the site but outside of jurisdictional waters.	July 30, 2013
B. Commence construction of pilot-scale passive bioreactor treatment system.	October 31, 2013*
C. Complete construction of pilot-scale bioreactor treatment system and begin start-up period	January 15, 2014*
D. Commence monitoring to assess the performance of the treatment system, including semi-monthly monitoring inflow and effluent, incorporating seasonal fluctuations, to develop removal rate calibration curves.	January 31, 2014
E. Submit report to WVDEP summarizing performance of pilot-scale treatment system and expectations regarding its ability to achieve compliance with applicable effluent limitations. This report shall include Upshur's plans for achieving compliance with applicable effluent limitations and a timeframe for achieving the same as soon as practicable.	January 31, 2015

\* Assumes WVDEP action on submitted plans is timely – otherwise dates would be adjusted.

## EXHIBIT C

In conjunction with the work to be performed as set forth in Exhibit B herein, Upshur will evaluate certain pumping and collection systems (see following map), monitor flows through varying flow conditions and seasons, and use this information to develop a plan for improvements to treatment on the site, as set forth in the schedule below. The WVDEP agrees to allow Upshur to install additional passive treatment systems in place of existing systems along Tenmile Creek and at the Smith Hollow and New and Old Lee locations.

A. Initiate water monitoring program for pumping and collection systems to evaluate seasonal fluctuations in loading to collection systems.	June 30, 2013
B. Complete water monitoring program for pumping and collection systems.	June 30, 2014
<p>C. Submit remediation plan to WVDEP for approval addressing surface water management, including:</p> <ul style="list-style-type: none"> <li>(1) plans for expansion of retention capacity for structures, where necessary;</li> <li>(2) plans for diversion and isolation of surface runoff from structures, where necessary,</li> <li>(3) plans for construction of passive treatment bioreactor at either Tenmile Mile tail track or Smith Hollow; and</li> <li>(4) the addition of new outlets, if necessary.</li> </ul> <p>This plan shall include a timeline for completing this work as soon as practicable but no later than October 1, 2017, and appropriate interim deadlines for apprising WVDEP of the status of this work.* To the extent that Upshur determines that no improvements to certain structures are necessary, this plan should provide Upshur's rationale for that determination.</p>	October 1, 2014
D. Upon approval of the remediation plan by WVDEP, submit specific designs for the proposed treatment structures, diversion structures, and structure expansion.	Ninety days after approval of remediation plan
E. Commence construction of passive treatment system and/or other structure changes consistent with approved plans	Forty-five days after obtaining all required approvals and authorizations**
F. Complete construction of passive treatment system and/or other structure changes	Six months after approval of designs***
G. Complete start-up and monitoring of passive treatment system	Twelve months after approval of designs
H. Provide demonstration of passive treatment system effectiveness to the WVDEP	Fifteen months after approval of designs

\* This deadline is intended to reflect the possible time that may be required to obtain necessary permitting approvals from WVDEP and/or the United States Army Corps of Engineers for any work that must be done to insure future compliance with applicable permits and water quality standards.

**\*\* Upon written request by Upshur, the WVDEP may agree to an extension of this deadline for a period not to exceed 15 days.**

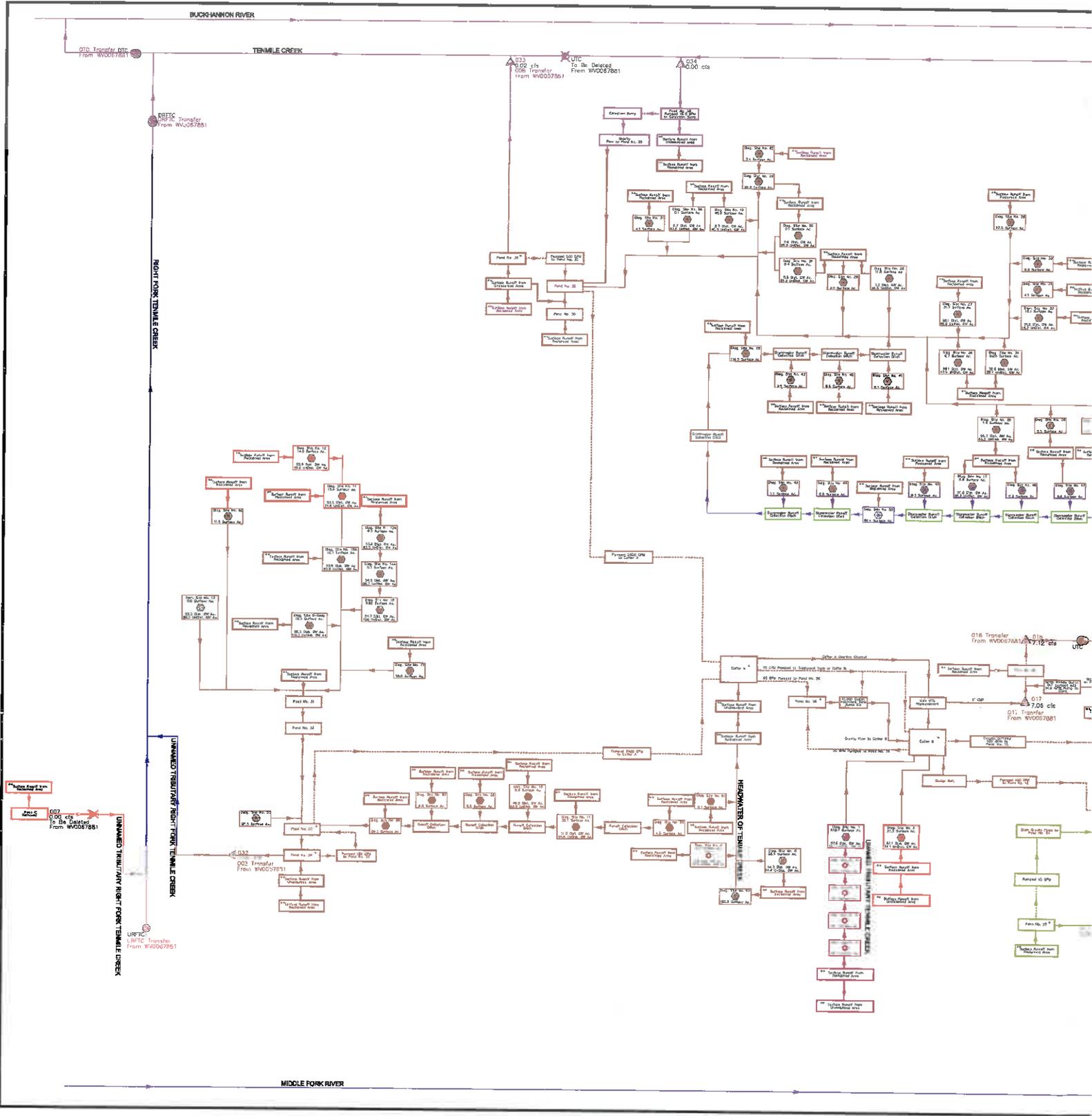
**\*\*\*This deadline will be adjusted accordingly if design approval occurs at the end of or after the available construction season.**



**EXHIBIT D**

A. Initiate water monitoring program to identify primary precipitation-induced discharges at the site.	June 30, 2013
B. Complete water monitoring program for primary precipitation-induced discharges at the site.	June 30, 2014
C. Submit corrective plan to WVDEP for approval setting forth  (1) the results of this water monitoring program, (2) plans for diverting runoff away from the site's primary treatment systems to reduce the volume of discharge required to be treated; or (3) plans for the construction of stormwater diversion systems, where necessary.  This plan shall include a timeline for completing this work as soon as practicable as or no later than October 1, 2017, and appropriate interim deadlines for apprising WVDEP of the status of this work.	October 1, 2014

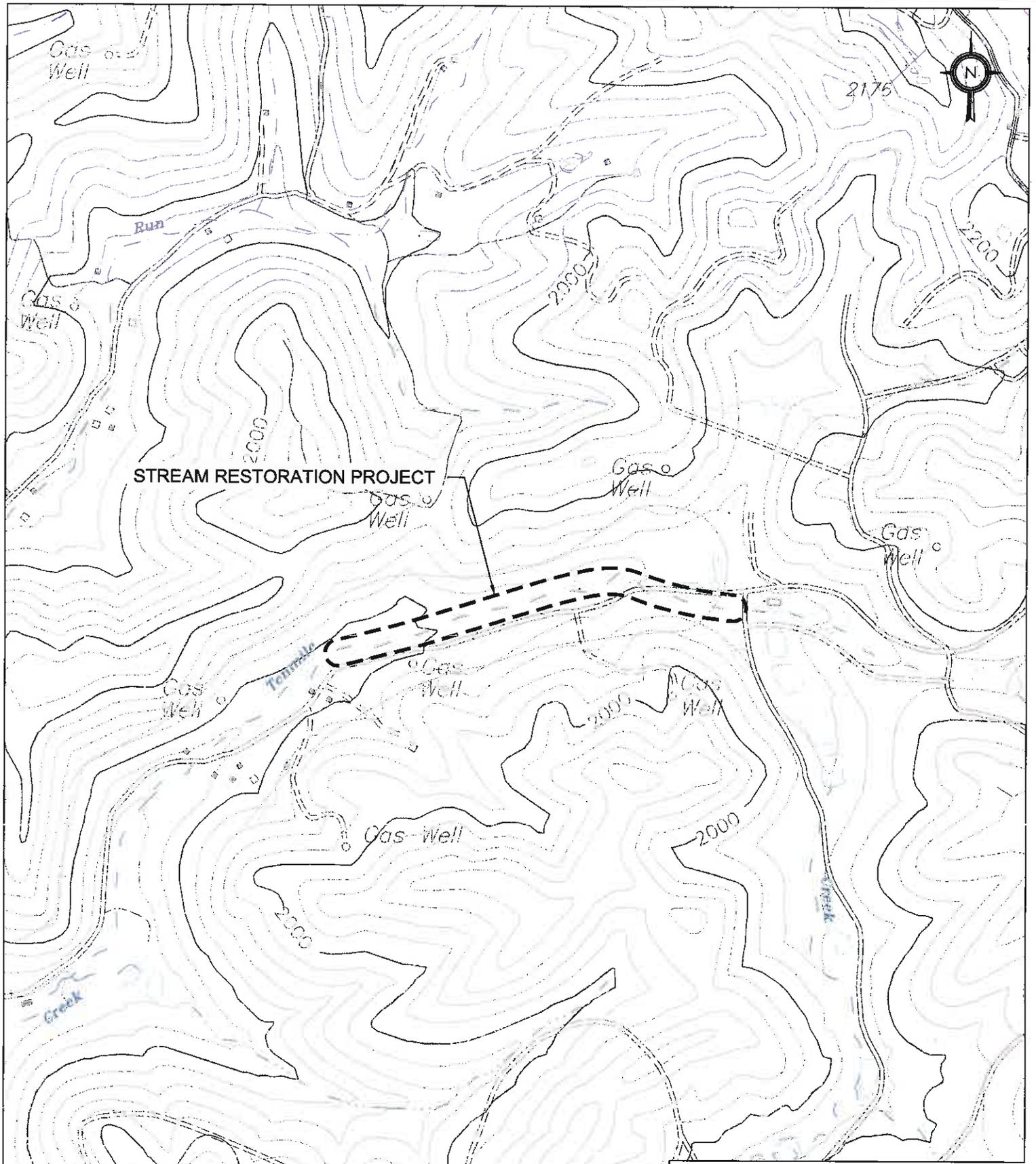
\* This deadline is intended to reflect the possible time that may be required to obtain necessary permitting approvals from WVDEP and/or the United States Army Corps of Engineers for any work that must be done.



## **EXHIBIT E**

A. Submit all necessary approvals for the construction and installation of dewatering siphons on structures 003 and 004 (to improve retention time and to allow for the elimination of Outlet 002)	Approved June, 2013
B. Commence construction of dewatering siphons.	August 30, 2013
C. Complete construction and installation of dewatering siphons on structures 003 and 004 and removal of trapped sediments (to improve retention time and to allow for the elimination of Outlet 002)	November 15, 2013
D. Conduct semi-monthly monitoring of structures 003 and 004	October 15, 2013 – October 15, 2014
E. If necessary based on post-construction monitoring, submit remediation plan to the WVDEP to achieve compliance with effluent limitations	January 15, 2015

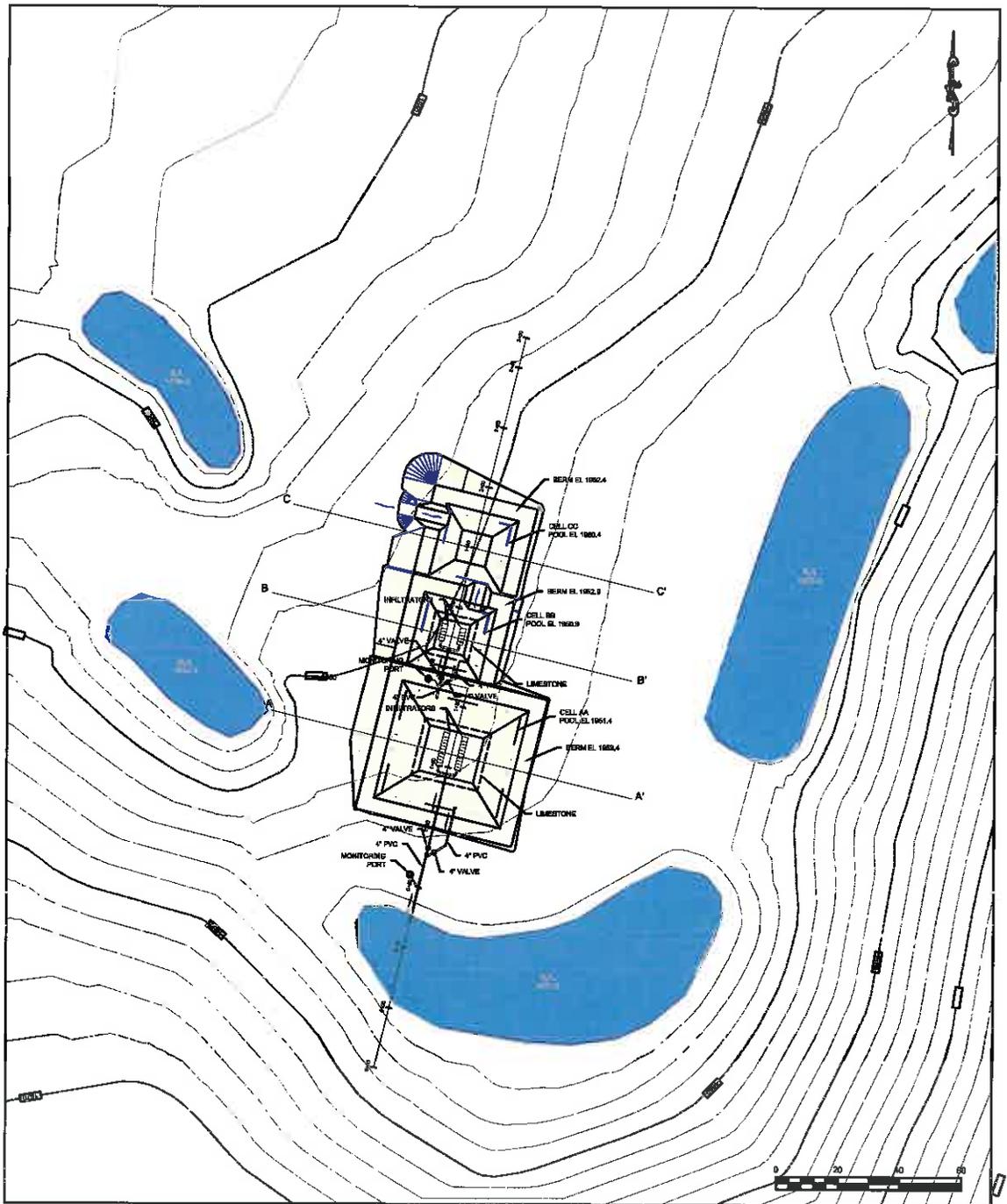
\* Assumes WVDEP action on submitted plans is timely – otherwise dates would be adjusted.



**STREAM RESTORATION PROJECT**

DRAWN		 EASTERN REGION OPERATIONS 63 CORPORATE CENTER DRIVE SCOTT DEPOT, WV 26050			
DATE	BY				
1/24/11	CAS	<b>UPSHUR PROPERTY, INC.</b>			
REVISED	DATE BY				
		<b>EXHIBIT F</b> <b>STREAM RESTORATION PROJECT</b>			
APPROVED	DATE BY	CONTOUR INTERVAL	SCALE	FILE NO.	SHEET NO.
		40.0'	1"=1000'		1 of 1
		COORDINATE SYSTEM			
		NAD 83			





Volume  
Existing  
Final S  
Cut vol  
Fill vol  
Area In  
Area In  
Total L  
Average  
Average  
Cut to I  
Export  
Elevation  
Volume  
Cut (C)  
Fill (C)

PLAN VIEW  
1987

Upshur Property, Inc  
Exceedance Summary 01/01/07 - 12/31/2013

NPDES Permit	SMCRA Permit	Outfall or Outlet #	Date	Parameter	Reported Values		Permit Limits		Exceedances		Exceedance %		Location	
					Month Ave or Min	Daily Max or Max	Month Ave or Min	Daily Max or Max	Month Ave or Min	Daily Max or Max	Month Ave or Min	Daily Max or Max	Latitude	Longitude
WV0067881	S-0108-82	017	3/31/2007	Al	1.367	2.22	RO	RO	0	0	218%	196%	38° 52' 06"	80° 09' 23"
WV0050717	P-0698-00	002	4/30/2007	pH	NA	9.18	6	9.00	0	1	NA	2%	38° 52' 43"	80° 09' 31"
WV0067881	S-0108-82	017	4/30/2007	Al	0.724	0.754	0.43	0.75	1	1	58%	1%	38° 52' 06"	80° 09' 23"
WV0050717	S-0057-80	402	6/13/2007	Total Kjeldahl Nitrogen	NA	6.299	NA	6.00	0	1	NA	5%	38° 52' 16"	80° 08' 51"
WV0067881	S-0091-83	002	6/30/2007	Mn	3.617	3.617	1.00	1.73	1	1	262%	109%	38° 51' 52"	80° 10' 37"
WV0067881	S-0091-83	002	6/30/2007	Al	2.467	2.467	0.08	0.14	1	1	2984%	1662%	38° 51' 52"	80° 10' 37"
WV0067881	S-0012-82	016	6/30/2007	Mn	3.76	3.76	2	3.47	1	1	88%	8%	38° 50' 37"	80° 08' 49"
WV0050717	P-0698-00	001	7/31/2007	Al	0.1815	0.24	0.08	0.14	1	1	127%	65%	38° 52' 43"	80° 09' 34"
WV0050717	P-0698-00	002	7/31/2007	Al	0.437	0.45	0.08	0.14	1	1	446%	219%	38° 52' 43"	80° 09' 31"
WV0050717	P-0698-00	004	7/31/2007	Al	0.125	0.15	0.08	0.14	1	1	56%	6%	38° 52' 38"	80° 09' 12"
WV0067881	S-0108-82	017	7/31/2007	Al	0.477	0.45	0.43	0.75	1	0	11%	NA	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	001	8/31/2007	Al	0.1865	0.194	0.08	0.14	1	1	133%	39%	38° 49' 51"	80° 11' 53"
WV0050717	P-0698-00	001	8/31/2007	Al	0.17	0.17	0.08	0.14	1	1	113%	19%	38° 52' 43"	80° 09' 34"
WV0050717	P-0698-00	002	8/31/2007	Al	0.4385	0.48	0.08	0.14	1	1	448%	243%	38° 52' 43"	80° 09' 31"
WV0050717	P-0698-00	004	8/31/2007	Al	0.136	0.14	0.08	0.14	1	0	70%	NA	38° 52' 38"	80° 09' 12"
WV0094901	S-0163-76	001	9/30/2007	Al	0.1165	0.147	0.08	0.14	1	1	46%	5%	38° 49' 51"	80° 11' 53"
WV0050717	P-0698-00	002	9/30/2007	Al	0.281	0.31	0.08	0.14	1	1	251%	121%	38° 52' 43"	80° 09' 31"
WV0050717	P-0698-00	004	9/30/2007	Al	0.089	0.09	0.08	0.14	1	0	11%	NA	38° 52' 38"	80° 09' 12"
WV0094901	S-0163-76	003	9/30/2007	Al	0.1125	0.113	0.08	0.14	1	0	41%	NA	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	002	10/31/2007	Al	0.201	0.23	0.08	0.14	1	1	151%	66%	38° 52' 43"	80° 09' 31"
WV0050717	P-0698-00	001	11/30/2007	Al	0.151	0.16	0.08	0.14	1	1	89%	9%	38° 52' 43"	80° 09' 34"
WV0050717	P-0698-00	002	11/30/2007	Al	0.486	0.66	0.08	0.14	1	1	508%	369%	38° 52' 43"	80° 09' 31"
WV0050717	P-0698-00	004	11/30/2007	Al	0.136	0.16	0.08	0.14	1	1	70%	16%	38° 52' 38"	80° 09' 12"
WV0067881	S-0108-82	017	11/30/2007	Al	0.524	0.643	0.43	0.75	1	0	22%	NA	38° 52' 06"	80° 09' 23"

Upshur Property, Inc  
Exceedance Summary 01/01/07 - 12/31/2013

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					Month Ave or Min	Daily Max or Max	Month Ave or Min	Daily Max or Max	Month Ave or Min	Daily Max or Max	Month Ave or Min	Daily Max or Max	Latitude	Longitude
WV0094901	S-0163-76	003	11/30/2007	Al	0.2145	0.241	0.08	0.14	1	1	168%	72%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	001	11/30/2007	Al	0.35	0.382	0.08	0.14	1	1	338%	173%	38° 49' 51"	80° 11' 53"
WV0050717	P-0698-00	001	12/31/2007	Al	0.268	0.27	0.08	0.14	1	1	235%	92%	38° 52' 43"	80° 09' 34"
WV0050717	P-0698-00	002	12/31/2007	Al	0.4685	0.58	0.08	0.14	1	1	486%	311%	38° 52' 43"	80° 09' 31"
WV0057881	S-0108-82	017	12/31/2007	Al	0.56	0.634	0.43	0.75	1	0	30%	NA	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	003	12/31/2007	Al	1.1185	0.929	0.08	0.14	1	1	1298%	564%	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	004	13/31/2007	Al	0.172	0.20	0.08	0.14	1	1	115%	39%	38° 52' 38"	80° 09' 12"
WV0057881	S-0108-82	017	1/10/2008	Al	NA	0.772	NA	0.75	0	1	NA	3%	38° 52' 06"	80° 09' 23"
WV0057881	S-0108-82	017	1/24/2008	Al	NA	1.31	NA	0.75	0	1	NA	75%	38° 52' 06"	80° 09' 23"
WV0050717	P-0698-00	001	1/31/2008	Al	0.297	0.40	0.08	0.14	1	1	271%	180%	38° 52' 43"	80° 09' 34"
WV0050717	P-0698-00	002	1/31/2008	Al	0.49	0.65	0.08	0.14	1	1	513%	364%	38° 52' 43"	80° 09' 31"
WV0050717	P-0698-00	004	1/31/2008	Al	0.1795	0.24	0.08	0.14	1	1	124%	68%	38° 52' 38"	80° 09' 12"
WV0067881	S-0108-82	017	1/31/2008	Al	1.041	NA	0.43	NA	1	0	142%	NA	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	003	1/31/2008	Al	0.69	0.43	1.25	0.75	1	1	60%	67%	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	001	2/29/2008	Al	0.2045	0.25	0.08	0.14	1	1	156%	72%	38° 52' 43"	80° 09' 34"
WV0050717	P-0698-00	002	2/29/2008	Al	0.44	0.59	0.08	0.14	1	1	450%	321%	38° 52' 43"	80° 09' 31"
WV0050717	P-0698-00	004	2/29/2008	Al	0.1655	0.17	0.08	0.14	1	1	107%	19%	38° 52' 38"	80° 09' 12"
WV0067881	S-0108-82	017	2/29/2008	Al	0.835	1.076	0.43	0.75	1	1	94%	43%	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	003	2/29/2008	Al	0.55	0.43	0.95	0.75	1	1	28%	27%	38° 50' 36"	80° 12' 03"
WV0067881	S-0108-82	017	3/3/2008	Al	NA	1.248	NA	0.75	0	1	NA	66%	38° 52' 06"	80° 09' 23"
WV0067881	S-0108-82	017	3/19/2008	Al	NA	0.803	NA	0.75	0	1	NA	7%	38° 52' 06"	80° 09' 23"
WV0067881	S-0108-82	017	3/31/2008	Al	1.025	NA	0.43	NA	1	0	139%	NA	38° 52' 06"	80° 09' 23"
WV0050717	P-0698-00	002	4/30/2008	Al	0.56	NA	0.43	NA	1	0	30%	NA	38° 52' 43"	80° 09' 31"
WV0067881	S-0108-82	017	4/30/2008	Al	0.589	0.552	0.43	0.75	1	0	37%	NA	38° 52' 06"	80° 09' 23"

Upshur Property, Inc  
Exceedance Summary 01/01/07 - 12/31/2013

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WV0050717	P-0698-00	002	5/31/2008	Al	0.51	NA	0.43	NA	1	0	19%	NA	38 52' 43"	80 09' 31"
WV0067881	S-0108-82	017	5/31/2008	Al	0.649	0.815	0.43	0.75	1	1	51%	9%	38 52' 06"	80 09' 23"
WV0050717	P-0698-00	002	6/30/2008	Al	0.52	NA	0.43	NA	1	0	21%	NA	38 52' 43"	80 09' 31"
WV0067881	S-0108-82	017	6/30/2008	Al	0.984	1.278	0.43	0.75	1	1	129%	70%	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	003	6/30/2008	Al	0.972	1.735	0.43	0.75	1	1	126%	131%	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	002	7/31/2008	Al	0.56	0.79	0.43	0.75	1	1	30%	5%	38 52' 43"	80 09' 31"
WV0050717	S-0057-80	402	9/10/2008	Dissolved Oxygen	NA	5.4	NA	6.00	0	1	NA	10%	38 52' 16"	80 08' 51"
WV0067881	S-0108-82	017	12/31/2008	Al	0.536	0.536	0.43	0.75	1	0	25%	NA	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	1/7/2009	Al	NA	1.274	NA	0.75	0	1	NA	70%	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	1/20/2009	Al	NA	0.804	NA	0.75	0	1	NA	7%	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	1/31/2009	Al	1.039	NA	0.43	NA	1	0	142%	NA	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	003	1/31/2009	Al	1.236	2.109	0.43	0.75	1	1	187%	181%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	2/2/2009	Al	NA	8.423	NA	0.75	0	1	NA	1023%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	2/16/2009	Al	NA	3.55	NA	0.75	0	1	NA	373%	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	002	2/28/2009	Al	0.446	0.599	0.43	0.75	1	0	4%	NA	38 52' 43"	80 09' 31"
WV0050717	P-0698-00	002	2/28/2009	Fe	0.745	1.334	0.47	0.82	1	1	59%	63%	38 52' 43"	80 09' 31"
WV0067881	S-0108-82	017	2/28/2009	Al	0.645	0.994	0.43	0.75	1	1	50%	33%	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	001	2/28/2009	Al	0.526	0.582	0.43	0.75	1	0	22%	NA	38 49' 51"	80 11' 53"
WV0094901	S-0163-76	003	2/28/2009	Al	5.987	NA	0.43	NA	1	0	1292%	NA	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	2/28/2009	TSS	39.5	43	35.00	70.00	1	0	13%	NA	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	3/30/2009	Al	0.95	2.24	0.43	0.75	1	1	193%	199%	38° 50' 36"	80° 12' 03"
WV0067881	S-0108-82	017	3/31/2009	Al	0.587	0.84	0.43	0.75	1	1	37%	12%	38 52' 06"	80 09' 23"
WV0050717	P-0698-00	002	4/30/2009	Al	0.451	0.475	0.43	0.75	1	0	5%	NA	38 52' 43"	80 09' 31"
WV0067881	S-0108-82	017	4/30/2009	Al	0.487	0.57	0.43	0.75	1	0	13%	NA	38 52' 06"	80 09' 23"

Upshur Property, Inc.  
Exceedance Summary 01/01/07 - 12/31/2013

NPDES Permit	SMCRA Permit	Outfall or Outlet #	Date	Parameter	Reported Values		Permit Limits		Exceedances		Exceedance %		Location	
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WV0067881	S-0108-82	017	4/30/2009	Mn	1.062	1.553	1.00	1.73	1	0	6%	NA	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	001	4/30/2009	Al	0.563	0.596	0.43	0.75	1	0	31%	NA	38 49' 51"	80 11' 53"
WV0094901	S-0163-76	003	4/30/2009	Al	0.891	1.142	0.43	0.75	1	1	107%	52%	38° 50' 36"	80° 12' 03"
WV0067881	S-0108-82	017	5/11/2009	Al	NA	1.973	NA	0.75	0	1	NA	163%	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	5/22/2009	Al	NA	1.275	NA	0.75	0	1	NA	70%	38 52' 06"	80 09' 23"
WV0050717	P-0698-00	002	5/31/2009	Al	0.476	0.546	0.43	0.75	1	0	11%	NA	38 52' 43"	80 09' 31"
WV0067881	S-0108-82	017	5/31/2009	Al	1.624	NA	0.43	NA	1	0	278%	NA	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	003	5/31/2009	Al	1.457	2.602	0.43	0.75	1	1	239%	247%	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	002	6/30/2009	Al	0.52	0.573	0.43	0.75	1	0	21%	NA	38 52' 43"	80 09' 31"
WV0067881	S-0108-82	017	6/30/2009	Al	0.715	0.879	0.43	0.75	1	1	66%	17%	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	001	6/30/2009	Al	0.553	0.86	0.43	0.75	1	1	29%	15%	38 49' 51"	80 11' 53"
WV0050717	P-0698-00	002	7/31/2009	Al	0.579	0.592	0.43	0.75	1	0	35%	NA	38 52' 43"	80 09' 31"
WV0067881	S-0108-82	017	7/31/2009	Al	0.451	0.528	0.43	0.75	1	0	5%	NA	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	003	7/31/2009	Al	0.934	0.934	0.43	0.75	1	1	117%	25%	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	002	8/31/2009	Al	0.576	0.576	0.43	0.75	1	0	34%	NA	38 52' 43"	80 09' 31"
WV0067881	S-0108-82	017	8/31/2009	Al	0.687	0.693	0.43	0.75	1	0	60%	NA	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	11/30/2009	Al	0.446	0.48	0.43	0.75	1	0	4%	NA	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	003	11/30/2009	Al	0.727	0.801	0.43	0.75	1	1	69%	7%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	12/31/2009	Al	0.631	1.015	0.43	0.75	1	1	47%	35%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	001	1/31/2010	Al	0.725	0.943	0.43	0.75	1	1	69%	26%	38 49' 51"	80 11' 53"
WV0094901	S-0163-76	003	1/31/2010	Al	0.963	1.362	0.43	0.75	1	1	124%	82%	38° 50' 36"	80° 12' 03"
WV0067881	S-0108-82	017	2/5/2010	Al	NA	0.77	NA	0.75	0	1	NA	3%	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	2/19/2010	Al	NA	0.833	NA	0.75	0	1	NA	11%	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	2/28/2010	Al	0.802	NA	0.43	NA	1	0	87%	NA	38 52' 06"	80 09' 23"

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NPDES Permit	SMCRA Permit	Outfall or Outlet #	Date	Parameter	Reported Values		Permit Limits		Exceedances		Exceedance %		Location	
					Month Ave or Min	Daily Max or Max	Month Ave or Min	Daily Max or Max	Month Ave or Min	Daily Max or Max	Month Ave or Min	Daily Max or Max	Latitude	Longitude
WV0094901	S-0163-76	003	3/9/2010	Al	NA	0.956	NA	0.75	0	1	NA	27%	38° 50' 35"	80° 12' 03"
WV0050717	S-0057-80	402	3/17/2010	Chlorine	NA	30	NA	28.00	0	1	NA	7%	38° 52' 16"	80° 08' 51"
WV0094901	S-0163-76	003	3/29/2010	Al	NA	1.382	NA	0.75	0	1	NA	84%	38° 50' 36"	80° 12' 03"
WV0067881	S-0108-82	017	3/31/2010	Al	0.824	1.382	0.43	0.75	1	1	92%	84%	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	003	3/31/2010	Al	1.169	NA	0.43	NA	1	0	172%	NA	38° 50' 36"	80° 12' 03"
WV0067881	S-0108-82	017	4/30/2010	Al	0.555	0.586	0.43	0.75	1	0	29%	NA	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	003	4/30/2010	Al	1.589	2.81	0.43	0.75	1	1	270%	275%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	5/4/2010	Al	NA	1.099	NA	75.00	0	1	NA	NA	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	5/20/2010	Al	NA	1.32	NA	0.75	0	1	NA	76%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	001	5/31/2010	Al	0.648	0.929	0.43	0.75	1	1	51%	24%	38° 49' 51"	80° 11' 53"
WV0094901	S-0163-76	003	5/31/2010	Al	1.21	NA	0.43	NA	1	0	181%	NA	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	002	7/31/2010	Al	0.477	0.541	0.43	0.75	1	0	11%	NA	38° 52' 43"	80° 09' 31"
WV0094901	S-0163-76	003	8/31/2010	Al	0.689	1.15	0.43	0.75	1	1	60%	53%	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	002	9/30/2010	Al	0.446	0.489	0.43	0.75	1	0	4%	NA	38° 52' 43"	80° 09' 31"
WV0067881	S-0108-82	017	9/30/2010	Al	0.44	0.493	0.43	0.75	1	0	2%	NA	38° 52' 06"	80° 09' 23"

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WV0067881	S-0108-82	017	12/31/2010	Al	0.511	0.623	0.43	0.75	1	0	19%	NA	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	1/4/2011	Al	NA	1.086	NA	0.75	0	1	NA	45%	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	1/30/2011	Al	NA	0.789	NA	0.75	0	1	NA	5%	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	1/31/2011	Al	0.83	NA	0.43	NA	1	0	62%	NA	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	003	1/31/2011	Al	0.738	1.073	0.43	0.75	1	1	72%	43%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	2/4/2011	Al	NA	0.828	NA	0.75	0	1	NA	10%	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	001	2/14/2011	pH	5.25	NA	6.00	NA	1	0	13%	NA	38 52' 43"	80 09' 34"
WV0094901	S-0163-76	003	2/14/2011	Al	NA	1.89	NA	0.75	0	1	NA	152%	38° 50' 36"	80° 12' 03"
WV0067881	S-0108-82	017	2/28/2011	Al	0.516	0.541	0.43	0.75	1	0	20%	NA	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	003	2/28/2011	Al	1.359	NA	0.43	NA	1	0	216%	NA	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	002	3/11/2011	Mg	NA	1.667	NA	1.73	0	0	NA	122%	38 52' 43"	80 09' 31"
WV0067881	S-0108-82	017	3/11/2011	Al	NA	1.321	NA	0.75	0	1	NA	76%	38 52' 06"	80 09' 23"
WV0050717	P-0698-00	002	3/28/2011	Mg	NA	1.254	NA	1.73	0	0	NA	67%	38 52' 43"	80 09' 31"
WV0067881	S-0108-82	017	3/28/2011	Al	NA	1.239	NA	0.75	0	1	NA	65%	38 52' 06"	80 09' 23"
WV0050717	P-0698-00	002	3/31/2011	Mg	1.461	NA	1.00	NA	1	0	240%	NA	38 52' 43"	80 09' 31"
WV0067881	S-0091-83	008	3/31/2011	Al	1.19	0.43	1.86	0.75	1	1	178%	148%	38 52' 15"	80 10' 34"
WV0067881	S-0091-83	008	3/31/2011	Mn	1.48	NA	1.00	NA	1	0	48%	NA	38 52' 15"	80 10' 34"
WV0067881	S-0108-82	017	3/31/2011	Al	1.28	NA	0.43	NA	1	0	198%	NA	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	003	3/31/2011	Al	0.814	1.482	0.43	0.75	1	1	89%	98%	38° 50' 36"	80° 12' 03"
WV0067881	S-0091-83	008	4/11/2011	Mn	NA	3.1	NA	1.73	0	1	NA	79%	38 52' 15"	80 10' 34"
WV0067881	S-0108-82	017	4/11/2011	Al	NA	1.26	NA	0.75	0	1	NA	68%	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	003	4/11/2011	Al	NA	1.46	NA	0.75	0	1	NA	95%	38° 50' 36"	80° 12' 03"
WV0067881	S-0091-83	008	4/25/2011	Mn	NA	4.55	NA	1.73	0	1	NA	163%	38 52' 15"	80 10' 34"
WV0067881	S-0108-82	017	4/25/2011	Al	NA	1.63	NA	0.75	0	1	NA	117%	38 52' 06"	80 09' 23"

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NPDES Permit	SMCRA Permit	Outfall or Outlet #	Date	Parameter	Reported Values		Permit Limits		Exceedances		Exceedance %		Location	
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					WV0094901	S-0163-76	003	4/25/2011	Al	NA	3.4	NA	0.75	0
WV0067881	S-0091-83	008	4/30/2011	Al	2.32	0.43	3.57	0.75	1	1	440%	376%	38° 52' 15"	80° 10' 34"
WV0067881	S-0091-83	008	4/30/2011	Mn	3.825	NA	1.00	NA	1	0	283%	NA	38° 52' 15"	80° 10' 34"
WV0067881	S-0108-82	017	4/30/2011	Al	1.445	NA	0.43	NA	1	0	236%	NA	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	001	4/30/2011	Al	0.512	0.63	0.43	0.75	1	0	19%	NA	38° 49' 51"	80° 11' 53"
WV0094901	S-0163-76	003	4/30/2011	Al	2.43	NA	0.43	NA	1	0	465%	NA	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	002	5/31/2011	Al	0.494	0.517	0.43	0.75	1	0	15%	NA	38° 52' 43"	80° 09' 31"
WV0067881	S-0108-82	017	5/31/2011	Al	0.791	0.843	0.43	0.75	1	1	84%	12%	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	003	5/31/2011	Al	0.714	0.719	0.43	0.75	1	0	66%	NA	38° 50' 36"	80° 12' 03"
WV0050717	P-0698-00	002	6/30/2011	Al	0.459	0.518	0.43	0.75	1	0	7%	NA	38° 52' 43"	80° 09' 31"
WV0094901	S-0163-76	003	6/30/2011	Al	0.816	1.28	0.43	0.75	1	1	90%	71%	38° 50' 36"	80° 12' 03"
WV0050717	S-0057-80	402	7/6/2011	BOD	NA	15.8	NA	10.00	0	1	NA	58%	38° 52' 16"	80° 08' 51"
WV0094901	S-0163-76	003	7/31/2011	Al	0.5	NA	0.43	NA	1	0	16%	NA	38° 50' 36"	80° 12' 03"
WV0050717	S-0057-80	402	8/3/2011	BOD	NA	17.5	NA	10.00	0	1	NA	75%	38° 52' 16"	80° 08' 51"
WV0050717	P-0698-00	002	10/31/2011	Fe	0.54	0.61	0.47	0.82	1	0	15%	NA	38° 52' 43"	80° 09' 31"
WV0067881	S-0108-82	017	12/31/2011	Al	0.59	0.87	0.43	0.75	1	1	37%	16%	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	003	1/9/2012	Al	NA	1.15	NA	2.05	0	0	NA	53%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	1/23/2012	Al	NA	1.78	NA	2.05	0	0	NA	137%	38° 50' 36"	80° 12' 03"
WV0067881	S-0108-82	017	1/31/2012	Al	0.62	0.68	0.43	0.75	1	0	44%	NA	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	003	1/31/2012	Al	1.465	NA	1.18	0.00	1	0	243%	NA	38° 50' 36"	80° 12' 03"
WV0067881	S-0108-82	017	2/29/2012	Al	0.45	0.53	0.43	0.75	1	0	5%	NA	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	003	3/5/2012	Al	NA	1.52	NA	2.05	0	0	NA	103%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	3/18/2012	Al	NA	1.16	NA	2.05	0	0	NA	55%	38° 50' 36"	80° 12' 03"
WV0094901	S-0163-76	003	3/26/2012	Al	NA	1.86	NA	2.05	0	0	NA	148%	38° 50' 36"	80° 12' 03"

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WV0067881	S-0091-83	008	3/31/2012	Al	1.35	0.43	1.35	0.75	1	1	214%	80%	38 52' 15"	80 10' 34"
WV0067881	S-0091-83	008	3/31/2012	Mn	2.37	2.37	1.00	1.73	1	1	137%	37%	38 52' 15"	80 10' 34"
WV0067881	S-0108-82	017	3/31/2012	Al	0.855	0.96	0.43	0.75	1	1	99%	28%	38 52' 06"	80 09' 23"
WV0094901	S-0163-76	003	3/31/2012	Al	1.513	NA	1.18	NA	1	0	252%	NA	38° 50' 36"	80° 12' 03"
WV0067881	S-0108-82	017	4/30/2012	Al	0.867	1.7	0.43	0.75	1	1	102%	127%	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	021	4/30/2012	pH	5.8	6.45	6.00	9.00	1	0	3%	NA	38° 52' 25"	80° 9' 35"
WV0067881	S-0108-82	017	6/30/2012	Mn	1.12	1.14	1.00	1.73	1	0	12%	NA	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	021	6/30/2012	pH	5.8	6.45	6.00	9.00	0	0	3%	NA	38° 52' 25"	80° 9' 35"
WV0067881	S-0108-82	017	8/31/2012	Mn	1.42	1	1.86	1.73	1	1	42%	8%	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	11/30/2012	Mn	1.97	1.97	1.00	1.73	1	1	97%	14%	38 52' 06"	80 09' 23"
WV0067881	S-0108-82	017	1/10/2013	Al	0.6	0.8	0.43	0.75	1	1	40%	7%	38° 52' 06"	80° 09' 23"
WV0067881	S-0108-82	017	1/21/2013	Mn	1.31	1.82	1	1.73	1	1	31%	5%	38° 52' 06"	80° 09' 23"
WV0050717	P-0698-00	002	1/31/2013	Fe	0.57	N/A	0.47	N/A	1	0	21%	N/A	38° 52' 43"	80° 09' 31"
WV0067881	S-0108-82	017	2/28/2013	Al	0.55	N/A	0.43	N/A	1	0	28%	N/A	38° 52' 06"	80° 09' 23"
WV0094901	S-0163-76	002	2/28/2013	Al	1.42	N/A	1.18	N/A	1	0	20%	N/A	38° 49' 46"	80° 11' 49"
WV0067881	S-0108-82	017	4/1/2013	Al	0.51	N/A	0.43	N/A	1	0	19%	N/A	38 52' 06"	80 09' 23"