

UPDATED: Massey coal slurry lawsuit settled

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Associated Press

Jul 27, 2011

After a marathon mediation session that ended just before dawn Wednesday, mining company Massey Energy settled a 7-year-old lawsuit with hundreds of southern West Virginia residents who claim the company poisoned their drinking water supplies with coal slurry.

Circuit Judge Alan Moats, who serves on the state's Mass Litigation Panel, told The Associated Press that he and Judge Derek Swope worked with the lawyers until nearly 4 a.m. to hammer out an agreement in Charleston. The financial terms will not be disclosed, but Moats said that as is typical in a settlement, Massey admits no wrongdoing.

"We're pleased we were able to find an agreeable resolution for all parties," said Rick Nida, spokesman for Virginia-based Alpha Natural Resources. Alpha became involved in the case when it bought Massey for \$7.1 billion in June and has been considering a deal that would satisfy both sides, he said.

The parties have been subject to a gag order imposed last week, but an attorney for the plaintiffs issued a brief statement by email.

"After a seven-year long fight and looking after one another, the good people of Rawl, Lick Creek, Merrimac and Sprigg have achieved a settlement," said lawyer Bruce Stanley.

"Hopefully, no other West Virginia community will ever again be subjected to such a blatant abuse of basic human needs."

As Swope and Moats handled mediation of the case, a separate panel of judges was preparing for an Aug. 1 trial. The settlement will avert that trial.

Rawl resident Donetta Blankenship, whose case would have been among the first tried, says she suffered life-threatening liver problems in 2005 and 2006 that she believes were caused by the tainted water. She's since had medical treatment and now gets her water from a public system. Today, Blankenship says, she's healthy.

"I'm thankful it's over," she said, adding that she hopes the residents' victory sends a message to other communities facing battles with corporations like Massey.

"People can see that they don't have to put up with it anymore," said Blankenship, 44. "I want everybody all over the country to find out they don't have to do that. They can fight and stick together. ... They can fight and win."

This was the third attempt to settle the case.

"It was a huge team effort," Moats said, praising both sides for working hard to find common ground after such a long fight. The resolution "shows justice can be done and cases can be officially moved even if they are cases like this."

Some 700 people had sued Massey and its Rawl Sales & Processing subsidiary, claiming the companies contaminated their aquifer and wells by pumping 1.4 billion gallons of toxic coal slurry into worked-out underground mines between 1978 and 1987.

Slurry is created when coal is washed to help it burn more cleanly. The residents say it seeped out of the old mine workings and into their aquifer, turning their well water varying shades of red, brown and black, and causing ailments ranging from learning disabilities to cancer.

For the plaintiffs, Moats said the settlement provides peace of mind.

“Resolving something yourself takes the uncertainty out of it,” he said. “I tell people when they come into court, usually it’s going to be more palatable than if someone reaches the agreement for you. It’s definitely a good thing for the resolution to be reached.”

The case would have been heard in a series of trials, with the first seven cases covering only 17 plaintiffs. That left hundreds more cases that would have tied up the courts for months.

For decades, coal companies in Appalachia have injected slurry into worked-out mines as a cheap alternative to dams and other systems that can safely store or treat it. The industry claims underground injection is safe, but critics say slurry leaches into water tables through natural and man-made cracks in the earth.

The state Department of Environmental Protection has imposed a temporary ban on new injection sites. Last year, a team of West Virginia University researchers advised lawmakers to start monitoring coal slurry, even though they could not conclusively demonstrate a hazard to public health.

The U.S. Environmental Protection Agency has long allowed states to use old mines as “backfill wells” for waste, documenting some 5,000 of them in 17 states when it last counted in 1999. But the EPA said that includes sites used to store sludge, ash, sand, cement and other materials, and it cannot identify wells by subcategories.

That means it’s impossible to know how many of the sites contain coal slurry.

The plaintiffs are now mostly served by a public water system, but they argue that chronic exposure to metals and chemicals are to blame for birth defects and other health problems.

Last fall, Swope and Moats demanded every plaintiff attend first the mediation conference or risk being dropped from the lawsuit, so they piled into cars and buses and traveled from as far as Ohio and the Carolinas to Charleston.