

# The Weirton Daily Times

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## **Firm in suit against FirstEnergy has high-profile, winning record**

CHESTER – The law firm hired by a group of Lawrenceville residents to represent them in their lawsuit against FirstEnergy Corp. has a track record of winning high-profile environmental cases.

Kennedy & Madonna LLP, based in Hurley, N.Y., last litigated a major West Virginia environmental case in 2007, when it won a \$381 million jury verdict against the DuPont Co. – a decision that was upheld on appeal.

The law firm is comprised of Robert F. Kennedy Jr., son of the late Sen. Robert F. Kennedy, and his partner, Kevin J. Madonna. Kennedy is recognized as one of the country's foremost authorities on environmental law.

“We represent a broad range of communities. There's really no average community. ... Every case is different,” Madonna said.

A group of Lawrenceville residents filed the lawsuit a week ago in U.S. District Court in Wheeling, accusing FirstEnergy of negligence and gross negligence in its maintenance of the Little Blue Run coal ash impoundment.

FirstEnergy has been using the impoundment, which straddles the West Virginia-Pennsylvania line, since the mid-1970s for the disposal of coal ash byproduct material from the coal-fired Bruce Mansfield Plant in Shippingport, Pa. The 976-acre impoundment sits on 1,700 acres owned by FirstEnergy.

Coal ash waste results when scrubber technology is used to remove sulfur dioxide from coal emissions. The coal ash is mixed with lime and other materials, thickened into a slurry and sent through a seven-mile, underground pipeline to the unlined impoundment, where it is stored for an indefinite period of time.

Over the years, neighbors of Little Blue Run have complained of adverse health effects they attribute to the seepage of toxic chemicals into the groundwater surrounding the impoundment – seepage that has been documented by the Pennsylvania Department of Environmental Protection and monitoring stations installed by FirstEnergy.

Now, 53 Lawrenceville residents are claiming damage to their property values by the residual effects of FirstEnergy's coal ash disposal practices. Specifically, the lawsuit says the plaintiffs' properties have been "inundated with water via seeps from the impoundment," creating constantly wet conditions in the yards, causing the foundations to shift and producing mold.

Although Madonna has negotiated the sale of more than a dozen Lawrenceville homes to FirstEnergy, most residents there feel stuck with their properties, he said.

"Real estate agents won't even list the properties," Madonna said. "People's property values have been devastated ... so they deserve to be compensated."

Madonna said he was first contacted by Lawrenceville residents two and a half years ago. “I made a couple of trips to the community. The last couple of years, as more people have been impacted by the impoundment, they typically just call us,” he said.

The lawsuit seeks compensatory and punitive damages for 53 residents (35 homes) in the following areas: Johnsonville Road, Doberman Drive, Marks Run Road, Pyramus Road, Lynn Street, Aken Acres Lane, Hickory Road, Linden Avenue, Melody Lane and Desperado Lane.

Plaintiffs contacted said they were instructed not to comment while the lawsuit is pending.

Madonna said the lawsuit was filed with the assistance of the Jividen Law Offices in Wheeling and the Cochran Firm in Dothan, Ala., because he is not licensed to practice in West Virginia. The plaintiffs are asking for a jury trial.

In 2007, an 11-member jury in Clarksburg, W.Va., ordered DuPont to pay \$196.2 million in punitive damages – the largest civil plaintiff award that year – to a group of Harrison County residents represented by Kennedy. The residents claimed DuPont’s oversight of a 112-acre zinc waste site put them at risk of cancer, heart disease and lead poisoning.

“Our legal team has litigated in West Virginia before, so it’s good to be working in that state again,” Madonna said.

FirstEnergy spokeswoman Stephanie Walton said she couldn’t comment on pending litigation.

Meanwhile, FirstEnergy is reviewing a 29-page letter from the Pennsylvania DEP regarding FirstEnergy’s closure plan for Little Blue Run. FirstEnergy is under order from the U.S. District Court for the Western District of Pennsylvania to close Little Blue Run by the end of 2016, to monitor groundwater seeps in the vicinity and to remediate any contaminated groundwater.

FirstEnergy and the Pennsylvania DEP reached a consent decree last year outlining FirstEnergy's responsibilities regarding the closure of Little Blue Run and imposing a fine of \$800,000. The consent decree required FirstEnergy to file a closure plan by March 31. In August, the Pennsylvania DEP held a public hearing in Hookstown on the closure plan, in addition to soliciting written comments.

The PDEP letter, dated Oct. 3, outlines a number of "technical deficiencies" in FirstEnergy's closure plan and gives FirstEnergy 60 days to address the deficiencies. "The deficiencies outlined in the letter cover the gamut – from very technical to more substantive," said PDEP spokesman John Poister.

Walton declined to comment on specific deficiencies but said, "They've asked us to provide additional information. This is a standard step in the process ... and we look forward to finalizing the plan for closing the facility."

But environmentalist critics of FirstEnergy read the PDEP letter as an overdue necessary correction.

"My hat's off to the DEP. This is a stern technical deficiency letter," said Lisa Graves Marcucci, Pennsylvania community outreach coordinator for the Washington, D.C.-based Environmental Integrity Project.

"(FirstEnergy is) being held to some firm, specific details, and that's good."

Environmental Integrity Project staff attorney Whitney Ferrell said three "major" deficiencies outlined by PDEP have to do with FirstEnergy's failure to address the extent of the groundwater contamination in Lawrenceville, the groundwater clean-up plan and the potential impact to air quality.

"We think that the state has sent a clear message to FirstEnergy that they need to do better," Ferrell said. "The 60-day deadline shows that they're serious."

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