

discharges because of two interconnected federal statutes, each effectuated through Kentucky administrative agencies. The Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, more commonly referred to as the Clean Water Act (CWA), provided the basis for Claims One and Two, which the Court resolved in ICG’s favor. The Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. § 1201 *et seq.*, is the vehicle by which Sierra Club asserts the three pending claims. [R. 20.]

The facts undergirding these claims were extensively described by the parties and summarized in the Court’s previous Memorandum Opinion and Order. [R. 65 at 4-6.] The factual ambiguity that prevented resolution of Counts Three, Four, and Five is whether any of the discharges at issue emanated from nonpoint sources. In response, Sierra Club filed a Motion to Clarify Claims in which it explained that all of the claims were premised on point source discharges. [R. 66 at 4.] ICG responded to Sierra Club’s motion and agreed that nonpoint source discharges were not at issue. [R. 68.]

II

In light of Sierra Club’s clarification, all claims in this matter may now be resolved. Counts Three and Four are premised on point source discharges—subject to regulation by the CWA—that violate water quality standards promulgated under the SMCRA. Thus, the interconnectedness of the CWA and the SMCRA is determinative of the outcome of these claims.

Section 702 of the SMCRA (30 U.S.C. § 1292) states that nothing in the SMCRA “shall be construed as superseding, amending, modifying, or repealing” the CWA, among other statutes. Thus, SMCRA-based regulations are only allowed where there are regulatory gaps in the CWA. As to point source discharges, the CWA clearly regulates, undermining any effort to

bring a claim premised on a violation of the SMCRA. *See In re Surface Mining Regulation Litigation*, 627 F.2d 1346, 1366-69 (D.C. Cir. 1980) (explaining the relationship between the CWA and the SMCRA).

In other words, as between these two parties in an enforcement action, effluent limitations for point source discharges established pursuant to the CWA's regulatory scheme supersede the SMCRA's water quality standard requirements. Water quality standards formed the basis for the effluent limitations and then effectively "dropped out." To hold that water quality standards for point source discharges are subject to enforcement would modify and/or supersede the CWA in a manner that would violate § 702 of the SMCRA. Accordingly, summary judgment is issued in favor of ICG on Counts Three and Four.

Furthermore, because the SMCRA was not violated, ICG had no responsibility to install additional water treatment facilities. Summary judgment is accordingly granted in ICG's favor on Count Five.

III

Accordingly, and the Court being otherwise sufficiently advised, it is hereby **ORDERED** as follows:

- (1) ICG's Motion for Summary Judgment [R. 40] is **GRANTED** with regard to Counts Three, Four, and Five of Sierra Club's Complaint;
- (2) Sierra Club's Motion for Summary Judgment [R. 41] is **DENIED** as to Counts Three and Five;
- (3) Sierra Club's Motion to Clarify Claims and Enter Final Judgment [R. 66] is **GRANTED**;
- (4) ICG's Motion to file Surreply in Opposition to Sierra Club's Motion for Summary

Judgment [R. 49] is **DENIED** as moot;

(5) The Court will enter an appropriate Judgment contemporaneously herewith.

This 11th day of January, 2013.



Signed By:

Gregory F. Van Tatenhove 

United States District Judge