

Published: March 28, 2006 11:06 pm



Spadaro points out mining violations

Audrey Stanton

Register-Herald Reporter

Jurors Tuesday looked at slides of rocks and debris left behind in Oceana once the waters of the July 8, 2001, flood receded.

They also looked at aerial photographs of two surface mines and their valley fills, covered by vein-like erosion marks.

And they listened as a former mine inspector pointed out the violations there that he says contributed to the damage suffered by neighbors living below Pioneer Fuel's Winifrede and Simmons Fork mountaintop removal sites.

Jack Spadaro, known nationally for his criticism of weak enforcement action against Massey Energy after 300 million gallons of liquefied coal waste spilled in Kentucky streams in 2000, began his expert testimony Tuesday in this mass litigation that pits hundreds of residents in Mullens and Oceana against the coal and timber companies they say contributed to severe flood damage they suffered nearly five years ago.

After a morning of debate over Spadaro's credentials, Judge John Hutchison ruled that Spadaro was qualified to testify as an expert in the areas of mining as it related to mountaintop removal and in discussing issues related to the permit process and whether companies complied with regulations governing the permitting process.

Spadaro narrated a slide show depicting what he described as debris illegally carried from permitted mine sites to areas downstream from it and evidence of an overflowed pond.

"At least five times on Simmons Fork in the years preceding the July 8, 2001, flood, ... spoil had been placed onto the downslope outside the permitted area causing off-site damage to downstream areas," he said, adding the site also had violations regarding sediment ponds that had not been cleaned when necessary.

Perhaps most crucial to the plaintiffs' case against Pioneer Fuel, Spadaro pointed out two "notice of violation" citations issued to the company that were still in effect when the storm hit.

Spadaro pointed out a notice of violation issued to Pioneer's Simmons Fork operation Feb. 21, 2001, for placing spoil onto the downslope outside the permitted area, in violation of state rules regarding surface mining.

"The operator took until Sept. 19 to abate the violation," Spadaro said.

He also addressed a violation issued to the Winifrede No. 2 operation June 26, 2001 — only days before the flood. It was for failure to clean sediment in two ponds and was abated Nov. 30, 2001.

Both violations, Spadaro said, would contribute to flooding in the Oceana area.

Resources

- [Print this story](#)
- [E-mail this story](#)
- [Discuss this story](#)

Plaintiffs' attorney Randolph McGraw asked Spadaro if he agreed with the findings of the state-appointed Flood Analysis Technical Team that determined surface mining operations increased peak runoff.

"Yes," Spadaro answered. "It substantially increases the runoff."

But jurors were asked to disregard Spadaro's remark regarding peak runoff because defense attorneys successfully argued it fell outside his area of expertise.

Yet the question of peak runoff is one of three that jurors in this case are being asked to decide.

The Supreme Court recognized the July 8, 2001, rainfall event was unusual and unforeseeable, so it addressed how the defendant's conduct may come in to play.

The court has already said a landowner could only be liable if engaged in conduct on their land that was not reasonable.

It also said a jury would have to determine if whatever the property owners were doing materially increased the flow of the water off their property and if the increase materially increased the flooding of the streams.

Then, if the jurors find that the landowners' conduct increased flow and/or increased flooding, they must determine what was reasonable use.

If a landowner's use of the land is deemed reasonable, then there can be no liability.

Weeks before the trail began, Hutchison said jurors would not be making a social determination regarding whether mountaintop removal and clear-cutting are good or bad.

— E-mail:

bnaudrey@register-herald.com



• [Click to discuss this story with other readers on our forums.](#)

[Ads by Google](#)

[Advertise on this site](#)

[Online newspapers](#)

Discover what events made the headlines in historical newspapers.
[Ancestry.com](#)

[Beckley Wv](#)

Save up to 70% on Hotels in Beckley Wv w/SideStep
[Hotels.SideStep.com](#)

[Beckley Wv](#)

Guide for Hotels, Real Estate, Weather, Maps, Yellow & White Pages
[www.areaguides.net](#)

[Beckley Wv](#)

Plan a Trip with TripAdvisor. Find Hotel Deals, User Reviews & More.
[www.TripAdvisor.com](#)

© 2006 The Register-Herald
P.O. Box 2398, Beckley, WV 25802
Phone: (304) 255-4400; **Email news tips and feedback**

Community Newspaper Holdings, Inc. • CNHI Classified Advertising Network • CNHI News Service
Associated Press content © 2006. All rights reserved. AP content may not be published, broadcast, rewritten or redi
Our site is powered by [Zope](#) and our [Internet Yellow Pages](#) site is powered by [Premier Guide](#).
Some parts of our site may require you to download the [Flash Player Plugin](#).