

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

OHIO VALLEY ENVIRONMENTAL  
COALITION, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 3:05-0784

UNITED STATES ARMY CORPS  
OF ENGINEERS, et al.,

Defendants,

and

ARCOMA COAL COMPANY, et al.,

Intervenors Defendants.

**ORDER**

A hearing was scheduled for today on Plaintiffs' motion for preliminary injunction with respect to the Laxare East Mine (Doc. 154). The Court also expected to discuss the status of Camp Branch, Black Castle, and Republic No. 2 after the Intervenors submitted a supplemental report detailing any planned activity at those mines. Prior to the hearing, Intervenors agreed to limit mining activities at Laxare as described by counsel on the record and as detailed in the map, which was entered as Exhibit 1. Accordingly, the Court **DISSOLVES** the temporary restraining order (TRO) currently in place, and **CANCELS** the preliminary injunction hearing set to begin today.

The Intervenors further agreed to limit mining activities with respect to Black Castle and Republic No. 2 as counsel described on the record. Counsel also represented that the Republic No. 1 agreement previously reached remains in effect.

The parties were not able to reach an agreement with respect to the Camp Branch mine. Accordingly, the Court **GRANTED** a TRO prohibiting any disturbance of the two areas detailed in the Intervenor's status report filed on August 21, 2006, and the accompanying map attached as Appendix A. These areas consist of 15.40 acres to the south of marked Area No. 1, and 68.87 acres to the north of marked Area No. 1. The Plaintiffs' previously submitted \$500 bond for the Laxare TRO shall be transferred as security for the Camp Branch mine. Finally, the Court **SCHEDULED** a preliminary injunction hearing for **Wednesday, September 6, 2006, at 10:00 a.m. in Huntington.**

At the hearing, the Court also **ORDERED** the following:

The trial currently set for October 3, 2006, shall include a trial on the merits on all five mines: Camp Branch, Black Castle, Republic No. 2, Laxare, and Republic No. 1. To the extent that Plaintiffs' evidence and arguments are the same on Republic No. 1 as the four other mines, the Court will permit Plaintiffs to present them. If any of the Defendants, including the Intervenor, do not believe that they can adequately defend on the merits on Republic No. 1 at the trial, the Defendants are reserved the opportunity to present further argument or evidence in the form of post-trial submissions or a hearing if necessary.

Finally, the Plaintiffs objected to noticed depositions of experts recently submitted by the Corps. The Plaintiffs represented that the parties had an agreement to submit expert reports in lieu of depositions. The Corps did not dispute this agreement, but argued that it was made prior to the Corps' suspending the permits, and circumstances have changed since that time making expert depositions appropriate. The Court prohibited further discovery depositions. However, each of the parties shall have **14 days** from the entry of this Order to submit any new or additional expert reports, or to supplement previously filed expert reports. If a party reviews the newly submitted

reports and would like an opportunity to file a rebuttal report, the party may seek leave of Court to do so.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: August 23, 2006

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE