

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

PATRICIA BRAGG, et al.,

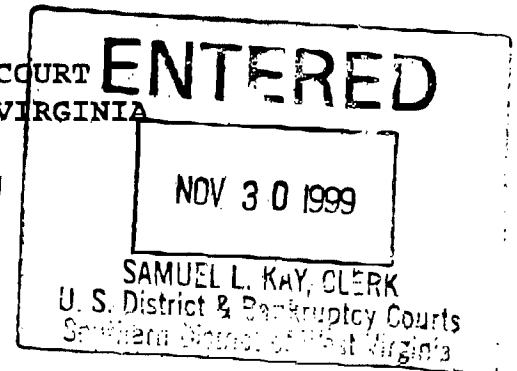
Plaintiffs,

v.

COLONEL DANA ROBERTSON, et al.,

Defendants.

CIVIL ACTION NO. 2:98-0636

SCHEDULING ORDER

Pending is the motion of all parties, except the Director of the West Virginia Department of Environmental Protection ("WVDEP"),¹ to enter a proposed consent decree. At a hearing on October 27, 1999 concerning proposals embodied in the consent decree, counsel for the WVDEP Director represented that the parties were close to agreement on additional details of the decree and proposed submitting a revised decree for the Court's approval. The Court has now completed review of all public comments submitted and is ready to proceed expeditiously.

On October 20, 1999 by Memorandum Opinion and Order, the Court

¹Pursuant to West Virginia Code § 5-3-21, the WVDEP Director was required to publish notice of his intent to consent to entry of the proposed consent decree and solicit public comment for thirty (30) days after publication before moving the Court for entry of the decree. Additionally, the Court set its own period for public comment on the consent decree, which ended September 30, 1999.

granted summary judgment for Plaintiffs on Counts 2 and 3 of the Second Amended Complaint. All Defendants have noticed interlocutory appeals of that decision. The proposed consent decree purports to settle all remaining allegations made against the WVDEP Director.²

Accordingly, the Court invites the parties' submission of any revised proposed consent decree on or before Wednesday, December 15, 1999. If the proposed consent decree is not available to the Court by that date, it will enter a new scheduling order setting the case for trial. Parties contesting any aspect of the Court's continuing jurisdiction in this action are directed to brief contested issues concurrent with submission of the proposed consent decree or, if no consent decree is presented, by Wednesday, December 15, 1999. If necessary, the Court will set a further briefing schedule at that time.

²The Court notes Plaintiff moved on June 25, 1999 to dismiss Counts 16 and 17 of the Second Amended Complaint. These counts run against Defendant Colonel Dana Robertson, District Engineer for the Huntington, West Virginia, office of the United States Army Corps of Engineers, for alleged violations of the Clean Water Act, the National Environmental Policy Act, and the Administrative Procedure Act. Only Defendants Robertson and United Mine Workers of America responded. The remaining Defendants may respond to Plaintiffs' motion by Wednesday, December 15, 1999. Plaintiffs shall reply, if necessary, by Wednesday, December 22, 1999.

The Clerk is directed to send a copy of this Order to counsel
of record.

ENTER: November 30, 1999

A handwritten signature in black ink, appearing to read "Charles H. Haden II", is written over a horizontal line.

Charles H. Haden II, Chief Judge