

Straight TALK

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Anatomy of Another Pollution

I previously wrote an article titled “Anatomy of a Pollution,” which appeared in the February 1988 *Pennsylvania Angler* magazine, where I discussed our investigation of a pollution event on Cooks Run, Clinton County. Today, Cooks Run is still severely polluted by the same mine site that continues to produce untreated acid mine drainage.

Most of us have heard about the coal industry’s national Clean Coal Campaign, coordinated by the American Coalition for Clean Coal Electricity (ACCCE). If you have driven any of Pennsylvania’s major highways lately, you have seen messages posted on billboards across our Commonwealth targeting as many voters as possible. Unfortunately, as we well know, fish and boats don’t vote, and the Pennsylvania Fish & Boat Commission (PFBC) can’t afford a similar campaign to stand up for the rights of fish, aquatic life and anglers and boaters for clean water. Nor should we, since we all know that it is against the law to pollute and kill fish, or is it?

The fight for clean water has long preceded the need to clean up coal. In fact, our ancestors and most of us have used the electricity produced by coal to heat and light our homes. There is absolutely no doubt that our country has created an infrastructure that makes us dependent on fossil fuels for producing our energy. Much like an addiction, it will most likely take us several generations to change that by going through a withdrawal stage to other forms of energy that pollute less but supply the energy needs that we expect. This column is not about the need for energy or industry’s ability or desire to clean air emissions at coal fired power plants. After all, even biologists turn their lights on when it gets dark. It is, however, about another pollution incident, one that occurred in southwestern Pennsylvania on Dunkard Creek, Greene County, in September 2009.

The facts of the case are simple. Dunkard Creek meanders around the Pennsylvania and West Virginia state line, and roughly 16 miles of stream are in Pennsylvania and 21 miles are in West Virginia. The West Virginia branch flows approximately 1 mile to where it enters Pennsylvania.



photo: Chris Urban

An estimated 42,997 fish, composed of at least 40 species, were killed by the pollution incident on Dunkard Creek, Greene County.

Elevated concentrations of total dissolved solids (TDS) and chlorides were discharged for a period of time from a coal mine in West Virginia into the West Virginia branch of Dunkard Creek. The water quality of the stream became toxic to aquatic life and favorable to supporting a bloom of an exotic and toxic form of golden algae that does not commonly grow in Pennsylvania streams but has caused fish kills in streams and lakes in other parts of the country. In September 2009, we received reports of a massive fish kill that was occurring over the course of approximately 37 miles of stream. PFBC staff thoroughly investigated the fish kill and estimated that the pollution incident killed 42,997 fish, comprised of at least 40 species; 15,382 freshwater mussels, representing 14 species including the Pennsylvania endangered snuffbox mussel; and 6,447 amphibians in the Pennsylvania portion of Dunkard Creek. West Virginia Division of Natural Resources (WVDNR) staff performed similar biological assessment surveys on the West Virginia portion of the stream, and the United States Environmental Protection Agency (EPA) was also involved in the investigation. The EPA and the State of West Virginia sued the coal company in federal court, but Pennsylvania was not a party to that lawsuit. West Virginia, EPA and the coal company agreed to settle the case for \$5.5 million to be split equally between EPA and the West Virginia Department of Environmental Protection, without an admission of any liability on the part of the coal company. The coal company paid WVDNR an additional \$500,000 for natural resource damages occurring in West Virginia. None of these settlement dollars went to Pennsylvania. The coal company also agreed to upgrade its treatment process at their coal mine to limit the



The pollution killed an estimated 6,447 mudpuppies.

Over multiple days, PFBC staff thoroughly investigated the fish kill.

total amount of chlorides and TDS that will be discharged into Dunkard Creek in the future. It has been reported that the coal company has spent \$200 million to upgrade the mine, \$130 million of which was spent on upgrading water treatment and an annual operating cost of \$14 million per year. Ironically, this water may never reach Pennsylvania since reportedly the company will sell the treated water to power plants and gas drilling companies or use it for its own fracking operations.

Now, this is where it gets complicated and admittedly frustrating from where I sit. Since Pennsylvania was not a party to the EPA and West Virginia lawsuit, I instructed our legal staff to pursue a case against the coal company to attempt to get compensated for the damages that occurred in our state in much the same way that West Virginia and EPA did for their interests. Although the pollution crossed state lines and was transported into our nation's water, Mr. Mason and Mr. Dixon must have stopped it.

We then proceeded to hire a private attorney who is licensed to practice law in the state of West Virginia and have been diligently working our way through the courts to make Pennsylvania whole for the damages that were caused. We withstood an attempt by the coal company to remove the case to federal court where federal law would have provided no remedy for Pennsylvania, and we were successful in getting the case moved back to the state court. However, in July, the West Virginia state court dismissed our case and held that PFBC, which was created in 1866 and received our water pollution enforcement authority from our General Assembly in 1909, lacks statutory authority to bring any civil action except for violations under Chapter 25 of the Fish and Boat Code, and therefore, lacks standing to bring an action under West Virginia law. In August, we filed an appeal with the West Virginia Supreme Court.

As I write this story, we are waiting to hear whether the West Virginia Supreme Court will hear our appeal. Right now, I feel like President Roosevelt's Man in the Arena, and I promise you that I will use all means necessary to right this wrong deed.

Your Director,
><(John{°>

It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.

—Theodore Roosevelt,
"The Man in the Arena,"
Given April 23, 1910



Theodore



The mission of the Pennsylvania Fish & Boat Commission is to protect, conserve and enhance the Commonwealth's aquatic resources and provide fishing and boating opportunities.