

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

CHARLESTON DIVISION

KENTUCKIANS FOR THE  
COMMONWEALTH, INC.,

Plaintiff,

v.

CIVIL ACTION NO. 2:01-0770

COLONEL JOHN RIVENBURGH, Colonel,  
District Engineer; ROBERT B. FLOWERS,  
Lieutenant General, Chief of Engineers  
and Commander of the U.S. Army  
Corps of Engineers; and MICHAEL D. GHEEN,  
Chief of the Regulatory Branch, Operations  
and Readiness Division, U.S. Army Corps  
of Engineers, Huntington District,

Defendants,

and

KENTUCKY COAL ASSOCIATION,  
POCAHONTAS DEVELOPMENT COMPANY, and  
AEI RESOURCES, INC.,

Intervenor-Defendants

MEMORANDUM OPINION AND ORDER

Pending are cross motions for summary judgment by Plaintiff  
Kentuckians for the Commonwealth, Inc. (KFTC), Defendant officers  
of the Army Corps of Engineers (Corps), and Intervenor-Defendants  
on Count One.

The Court holds that § 404 of the Clean Water Act does not  
allow filling the waters of the United States solely for waste