

Company responsible for West Virginia chemical spill declares bankruptcy

Clement Daly
20 January 2014

On Friday, Freedom Industries—the company responsible for the chemical leak, which poisoned the water of 300,000 West Virginians—filed for Chapter 11 bankruptcy protection. The filing is a blatant attempt by the company to escape legal and financial responsibility for the chemical spill, as it will put on hold the some 25 lawsuits already filed against the company since the leak was discovered on January 9.

The legal maneuver is completely of a piece with the bankruptcy proceedings currently underway in Detroit that are supported by the Obama administration and the entire political establishment. In Detroit, federal bankruptcy laws are being used to circumvent the Michigan Constitution, as unelected emergency manager Kevyn Orr moves to rip up labor contracts, eliminate the city's pension obligations, sell off public assets like the artwork at the Detroit Institute of Arts, and privatize assets like the city water department and the historic Belle Isle public park.

Just as in Detroit, the bankruptcy filing by Freedom Industries is being used to protect the wealth of the banks and corporate elite at the expense of the working population. Both Detroit and West Virginia have long been under the political control of the Democratic Party. In West Virginia, the bankruptcy of Freedom will be used to protect powerful interests in the state's chemical and coal industries.

Since the chemical leak from Freedom Industries left nine West Virginia counties—representing more than 16 percent of the state's population—without safe water for drinking, cooking, cleaning, or bathing for more than a week and a half, more information has surfaced regarding the criminal and reckless nature of the little-known company.

According to the *Charleston Gazette*, the multi-million-dollar company was co-founded in 1992 by Carl Lemley Kennedy II, who has "longstanding ties to the Charleston business community" and once "owned extensive property in downtown Charleston." Freedom's other co-founder is current company president Gary Southern, whose arrogance and indifference expressed at the company's first and only press conference on January 10 has justifiably enraged affected residents.

In Kennedy and Southern, one sees in a particularly crude form the antisocial outlook of the lower rungs of the capitalist class. In 1987, Kennedy pled guilty to selling cocaine. Later, he filed for bankruptcy in 2005 after he was charged with tax evasion for withholding more than \$1 million from employee paychecks which he never passed on to the federal government. He served less than two years after agreeing to make controlled cocaine buys for police while wearing a wire.

Freedom serves as the middleman between chemical giants such as Eastman Chemical and Georgia Pacific Chemicals and the coal industry, to which it provides the 4-methylcyclohexane methanol, or crude MCHM, used in the processing of coal. Its services brought the company more than \$30 million in revenue last year, according to its bankruptcy filing.

However, Freedom has existed in its current form only since December 31, 2013, when it merged with three other partner companies: Etowah River Terminal LLC, the facility where the chemical leaked from; Poca Blending LLC, the facility in Nitro, West Virginia where the chemicals at Etowah have since been sent; and Crete Technologies LLC.

The merger coincided with the company's \$20 million acquisition by Chemstream Holdings, which is owned by J. Clifford Forrest of Kittanning, Pennsylvania. Forrest is also the president of Rosebud Mining—the third-largest underground coal producer in Pennsylvania, according to the *Washington Post*.

Over the years, the companies involved in the Freedom merger have maneuvered, shifted management, and manipulated their corporate structures to avoid legal and financial restrictions. As the *Gazette* reports, "Since 1992, Freedom and its associates have made 12 filings, to found companies, dissolve companies, merge companies and change officers."

Kennedy incorporated Poca in 1999 and Dennis P. Farrell founded Etowah in 2001. Both companies had their licenses revoked in 2005 by the West Virginia secretary of state for failing to file annual reports. In 2008, Farrell also established

Crete in Delaware. In late 2011, Poca was reorganized as an LLC to escape its license revocation six years earlier.

In its bankruptcy filing, Freedom claims assets of up to \$10 million, while county tax filings show an additional \$5 million in land and other personal property owned by Freedom and Etowah. The bankruptcy filing claims the company owes \$3.6 million to various unsecured creditors. On top of this, Freedom also owes the Internal Revenue Service (IRS) more than \$2.4 million in unpaid taxes.

The *Gazette* reports that Freedom also filed a “debtor-in-possession” motion on Friday about an hour after its bankruptcy filing. This will allow the company not only to secure up to a \$5 million loan to continue functioning, but will also give its proposed lender, WV Funding LLC, priority over all other creditors in the bankruptcy agreement.

However, the *Gazette* claims that no records currently exist for WV Funding LLC with either the West Virginia or Pennsylvania secretary of states. It is believed that the funding will flow through another company, Mountaineer Funding LLC, which is also listed on the DIP agreement and was incorporated by Freedom’s owner J. Clifford Forrest on Friday.

The IRS currently holds three liens against Freedom for nearly \$2.5 million in unpaid taxes throughout the 2000s. The company also has two additional liens against it related to thousands of dollars in unpaid unemployment compensation insurance filed in 2002 and 2003 by the West Virginia Bureau of Employment Programs.

In addition to the violations issued by the West Virginia Department of Environmental Protection (DEP) at the Etowah site in connection with the leak, Freedom also faces five new violations at its Poca facility in Nitro where it moved all its chemicals. On Tuesday, the DEP visited Poca and cited the company for improper storage of materials, failure to comply with its storm water permit, failure to provide required pollution monitoring reports, and failure to provide appropriate secondary containment for its chemicals.

The DEP claimed that “Secondary containment within the facility was deteriorated or non-existent” due to holes in the building walls at the ground level. Last week, the DEP also released its inspection reports in response to odor complaints at the Etowah site in 2010, which concluded at that time that the facility did not meet the state test for needing an air pollution permit.

Freedom is now attempting to claim that a nearby leaking water main of West Virginia American Water caused the ground to freeze and puncture the storage tank, causing the leak at the Etowah facility. However, it is clear that the Etowah facility, built on the site of a former Pennzoil/Quaker State gasoline and diesel terminal, had existing problems and was in bad repair.

Throughout all of this state and federal officials have proved unwilling to hold Freedom and its constituent companies legally accountable. This is not simply the result of incompetence, but reflects the stranglehold of the corporate elite over society and is in line with the Obama administration’s policy of protecting corporate wealth as it viciously attacks the working class.

The Obama administration has worked tirelessly to protect and expand the wealth of the richest Americans throughout the economic crisis while making available virtually limitless resources to the giant banks whose reckless and criminal activities precipitated the financial crash of 2008. However, when it comes to helping the working class when it is faced with a social crisis not of its making, the administration exhibits callous indifference.

The *World Socialist Web Site* and the Socialist Equality Party reject Freedom’s attempts to use bankruptcy to escape liability and demand the seizure of the company’s assets to be used as the down payment to provide full compensation to all workers affected by the chemical spill, as well as small businesses which have been forced to close down.

This should serve as the starting point for the nationalization of the chemical industry—whose products are essential for a modern society—and its subordination to the democratic control of the working population. Only in this way can the industry be operated in a safe manner with regards to public health and workplace conditions.



To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact