Company responsible for West Virginia chemical spill plans to liquidate

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Freedom Industries—the company responsible for the January 9 chemical spill that contaminated the water for 300,000 West Virginians—recently announced it plans to liquidate. The company had initially filed for Chapter 11 bankruptcy on January 17, allowing it to continue operating as it reorganized. Now Freedom says it will begin sending its customers to its competitors, selling its inventory of industrial chemicals, monetizing its assets, and laying off its workforce.

Documents submitted to the court showed that Freedom had $16 million in assets, including more than $5 million in inventory and $1 million in machinery, and $6 million in liabilities as of their January 17 bankruptcy filing. The Etowah River Terminal where the leak occurred is also valued at nearly $1 million and is to be dismantled before March 15 in an agreement the company made with the West Virginia Department of Environmental Protection.

The company made $19.6 million through the sale of its chemicals between July 1, 2013 and its January 17, 2014 bankruptcy filing. Over the previous two fiscal years, the company raked in $30.6 million and $25.6 million, respectively.

Freedom was co-founded in 1992 by current company president Gary Southern and Carl Lemley Kennedy II, who has “longstanding ties to the Charleston business community” and once “owned extensive property in downtown Charleston,” according to the *Charleston Gazette*.

However, in its current form, Freedom was created only 10 days prior to the spill through a merger with three other partner companies: Etowah River Terminal LLC, the storage facility on the Elk River where the chemical leak originated; Poca Blending LLC, the facility in Nitro, West Virginia where Freedom’s chemicals are mixed; 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 founder and president of Rosebud Mining, the third-largest underground coal producer in Pennsylvania with 28 coal mines and nearly 1,300 employees.

The companies involved in the Freedom merger have maneuvered, shifted management, and manipulated their corporate structures to avoid legal and financial restrictions over the years. As the *Gazette* noted at the time of its bankruptcy filing, “Since 1992, Freedom and its associates have made 12 filings, to found companies, dissolve companies, merge companies and change officers.”

The current and former executives of Freedom have a long list of personal and professional legal troubles. Co-founder Kennedy pled guilty to selling cocaine in 1987. In 2004, he was accused of defaulting on $8,630 in workers compensation payments as a director at Eight Capitol Street in Charleston, a suit that was dropped upon payment of the money. That same year, Kennedy and former Freedom president Dennis Farrell were also sued by D-G Airways for nonpayment of $22,470 in work performed on their airplane. That suit was also later dismissed.

In 2004, Kennedy also pled guilty to tax evasion and charges that he withheld more than $1 million from employee paychecks which he never passed on to the federal government while he was the accountant for Freedom, Poca Blending, and New River Chemical Co. between 2000 and 2003. He ended up serving less than two years for the tax evasion charge after agreeing to make controlled cocaine buys for police while wearing a wire. Kennedy also escaped a personal lawsuit against him in connection with this by declaring bankruptcy in 2005.

Former Freedom president and current sales associate at the company Dennis Farrell was accused in 2004 of nonpayment of $35,713 in workers compensation fees as

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the owner of Sun Room Creations Inc. The suit was dropped when Farrell eventually paid the money.

In 2006, Farrell was sued again, along with three companies he controlled—New River Chemical, Poca Blending, and Freedom—when New Jersey-based Dana Container sought payment for $32,046 in goods and services rendered to New River Trucking, a subsidiary of New River Chemical. As the *Gazette* explains, “Farrell and the three defending companies were accused of operating multiple entities as a single enterprise, unjust enrichment, fraud and civil conspiracy, but the suit was later dismissed with prejudice.”

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, which were filed in 2002 and 2003 by the West Virginia Bureau of Employment Programs, related to thousands of dollars in unpaid unemployment compensation insurance.

Freedom used its Chapter 11 bankruptcy filing to place on hold the dozens of lawsuits filed against it in connection with the January 9 spill and hold its creditors at bay. With the expressed intention of reorganizing, the company was allowed to secure a $3 million debtor-in-possession loan from WV Funding LLC, a company set up by current Freedom owner J. Clifford Forrest on the same day of the bankruptcy filing.

The move gave Forrest’s new company priority over nearly all the other creditors in the bankruptcy agreement. However, in announcing Freedom’s plans to liquidate, the company says it will return the loan unused along with a handsome $20,000 lender fee.

Freedom has more than 240 unsecured creditors, including West Virginia American Water and those who filed suit against the company before the January 17 bankruptcy filing. Lawyers for the unsecured creditors are reviewing Freedom’s documentation for inappropriate payments in the years leading up to the bankruptcy.

Among those transactions likely to be scrutinized are more than $6 million paid to various “insiders”—former owners and companies connected to the current owners—in the last year alone. While many of these payments were connected to the merger and transfer of the company in late December, they have had a major impact on the company’s current level of capital.

The three former owners of Freedom—Dennis Farrell, Charles Herzing, and William Tis—all received major payouts from the company over the past year. According to documents filed with the court, Farrell received more than $288,000 in 33 withdrawals last year; Herzing was paid more than $256,000 and his consulting firm Useful Solutions Inc. was given another $157,000; and Tis received $180,000 with his consulting firm Indigo Astoria, getting more than $131,000. The mining company of current Freedom owner J. Clifford Forrest was paid a $30,000 “reimbursement” on the day before the spill.

Freedom’s current president, Gary Southern, is also president of Enviromine, which produces environmental products for the mining industry. Enviromine received more than $3.3 million from Freedom last year in exchange for goods and services and is still owed an additional $1 million. It is listed as Freedom’s second largest unsecured creditor.

The bankruptcy will also likely serve to shield the personal fortunes amassed by the company’s former and current top executives. According to the *Gazette*, Ferrell paid $375,000 in cash for a four-bedroom house in Charleston with the sale being closed on the day of the spill and notarized a week after Freedom filed for bankruptcy. Southern reportedly bought a $1.2 million home in Florida in 2012.

The criminal and antisocial character of Freedom’s executives played no small part in the social disaster that the chemical spill has unleashed. Similar criminality was at work in the reckless operations of Massey Energy’s Upper Big Branch mine and BP’s Deepwater Horizon oil well, which killed 29 miners and 11 rig workers, respectively, in 2010.

More fundamentally, however, all these disasters are rooted in the social relations under capitalism and its private ownership of the means of production. From this fact flows the ability of such reckless operations to operate, aided by ineffectual regulatory agencies and shielded by the legal system.

Those involved deserve to be arrested and their wealth seized to address the needs of the affected population. The chemical industry and the water utilities—both essential for modern society—must be nationalized and placed under the democratic control of the population to ensure they are operated in a safe manner for the benefit of society at large.

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