

By Russ Cassady, Editor

The Buffalo Creek and Chisolm Energy coal-to-liquid plants are barely in existence, currently just plans on paper and a concrete pad at two Pike County sites.

The projects, a pair of coal-to-liquid fuel plants proposed to be built in Pike County by the same company proposing a similar project in Mingo County, W.Va., have been on the drawing board since at least January.

The plants, if built, will be the biggest economic development project undertaken in the county's history.

But, documents obtained by the News-Express show that the project is already plagued with problems and issues which raise questions about the level of involvement of the county government in the projects. There are also questions about whether the county improperly performed work for the company with no official authorization and trespassed on private property to do so.

County's assistance to company may not have been legal

On June 30, Pike Judge-Executive Wayne T. Rutherford issued an emergency executive order, authorizing the county to "assist" Industrial Construction, Inc., Transgas Development Systems' contractor, with supplies and manpower to begin construction on the projects.

However, emails obtained through a News-Express open records request to the county show that county workers and equipment were already in use, even before the order was issued.

At 1:57 p.m. on June 28, an email chain began when an official with the Kentucky Energy and Environment Cabinet said permits were signed and the company had the go-ahead to begin work on the projects.

Work began immediately on both projects, the emails show.

At some point in the construction, a backhoe belonging to the contractor, Industrial Construction Inc., broke down at the Buffalo Creek site, said Charles Carlton, director of energy and community development in Rutherford's administration, in a June 29 email to Hatcher-Trimble Trust attorney David Baird.

"Pike County is sending equipment and operator this morning to the site via Ivy Creek," Carlton wrote a day before the county was authorized to help the company by Rutherford's Executive Order.

Whether Rutherford legally had the ability to issue the executive order to allow county resources to be used in the Transgas effort is also in question.

The order was issued as an "Emergency Executive Order," but there are no provisions of state law which authorize county-judge executives to issue emergency orders outside of an "emergency" situation.

Under the state law which allows county chief executive officers to issue emergency orders, the definition of an "emergency" does not include situations such as assisting on the Transgas projects. Instead, the statute defines an "emergency" situation as one involving a danger to public safety or health, the response to which the local emergency management agencies have determined to be beyond their capabilities.

The Rutherford administration defended the work in a statement, and attached a copy of a check issued by Transgas Development reimbursing the fiscal court for \$1,079 in cost for the work performed.

"The backhoe stayed one afternoon in order to meet a regulatory deadline and the company was billed for the service for both the backhoe and the Pike County employee operator at commercial rates and Pike County was paid in full for the emergency service," the statement said. "Buffalo Energy is an economic development project and county crews do perform work on occasion at economic development sites such as cleanup, or in this instance, minor excavation."

The reimbursement issue was first broached, according to the documents, in an August email from Charles Carlton to Randall, Harris, an official with Transgas.

"We are in a position where we have to be able to show that the county was paid for this item if questions arise," Carlton wrote.

A copy of the check was not attached to the county's response to the News-Express' initial open records request because the county did not receive the check until after Oct. 5, days after the open records request was filed.

County may have trespassed to get to Buffalo Creek site

On June 29, Charles Carlton emailed Charles Baird, an attorney for the Hatcher-Trimble Trust, which owns the Buffalo Creek property, informing Baird that "Judge Combs," meaning Pike Circuit Judge Steve Combs, whose family owns the adjacent property, expressed that he was upset that a lighting system was moved onto the property and that workmen were allowed to transit to the site.

"Judge Combs did inform me last night that regardless of which direction we went in we were crossing his land."

Communications between Carlton and Harris confirm that workers had accessed the site and performed work.

In a June 30 email chain, it is identified that the footers at both sites have been poured and formed.

"Construction workers are dead tired," Harris wrote. "They have been at work since yesterday morning at 7 a.m. and have worked all night and most of today."

In the emails, Carlton indicates that he is aware the county may be doing something illegal in the course the work.

In a June 30 email to David Baird, attorney for the Hatcher-Trimble Trust, Carlton mentions that he had been on the Buffalo Creek site that day.

"When I got off the hill at Ivy Creek today, there was an automobile across the road blocking it," Carlton wrote, adding he was flagged down by people near the vehicle who turned out to be residents of the community getting ready to fill a swimming pool by attaching a hose to a fire hydrant. "For a minute, I thought it would be my luck that they were deputy sheriffs. They were housewives."

However, Pike Circuit Judge Steve Combs, who is one of the owners of the Combs property, said last week that it "should have been" deputies that Carlton met at the bottom of the hill because of the alleged trespass.

In the statement issued last week, Rutherford's office said that the county did not trespass on the Combs property, citing an assertion that the two properties owners had a deal worked out where they would allow each other to cross as invitees.

"Pike County was an invitee and hence there was no trespass," the statement said.

However, Combs said Wednesday that there was no such deal in place and that the county did illegally cross the property owned by his family.

Combs said that when his property was being mined, the Hatcher-Trimble Trust had collected \$1 for each ton of coal from the Combs site which was moved across the Hatcher property.

"Surely, they didn't think they could charge us \$1 a ton and then go over us for free?" Combs said.

Combs said that after the property was originally crossed and he informed Carlton of the trespass, he trusted that Carlton would not make the same mistake again.

However, after being initially contacted by the News-Express earlier this month, Combs said he found that the trespass had occurred again.

"I trusted he wouldn't do something that foolish," Combs said of Carlton.

The second trespass, Combs said, constituted a criminal act.

"Now they've committed criminal trespassing, intentionally and maliciously," he said.

Combs said that the issue will go to litigation if the county or company doesn't pay for damages to his family's property.

"We're going to be paid," he said.

Combs, a former mayor of Pikeville, also expressed concern that the county had assisted the private company with equipment and labor on private property.

“Can I now, as a businessman, call Wayne (T. Rutherford) and say, ‘Can you come out and help me out?’” he said.

As a secondary issue, Combs said he doesn’t know if he wants the facility to be located beside his property, after learning the facility could produce as much as 700,000 tons of fly ash each year and result in industrial water being dumped into waterways on his family’s property.

Pike County Attorney Howard Keith Hall’s office was not notified by Rutherford’s office of potential issues with the possible trespassing and was not asked to weigh in on whether Rutherford had the ability to issue the emergency executive order.

“We had nothing to do with that decision,” Hall said. “I’ve just heard about it on the streets.”

Chosen sites are not ideal for Transgas plants, reports show

Transgas is not the first entity to examine the Buffalo Creek and Chisolm sites as possible locations for alternative energy projects.

However, both were found to be among the lowest-rated as possible locations for a coal-to-liquid or coal-to-gas facility.

In 2009, the Lexington-based Smith Engineering Group examined the Buffalo Creek site, which is partially owned by Pike County Road Commissioner Frank Hatcher, at the request of the Pike Fiscal Court and Summit Engineering, according to the report.

The same year, SEG examined the Chisolm site at the request of the property owner, state Rep. W. Keith Hall’s company, S&K Properties.

According to the rankings of the dozens of Eastern Kentucky sites examined by the company as a part of a project by the state Energy and Environment Cabinet, neither site was seen as a good one for the type of facilities proposed to be built by Transgas.

The main problems identified in the report included a lack of an accessible water supply at both sites, as well as challenges in transportation and infrastructure.

Both plants are expected to require 3 million gallons of water per day, with half of that created by the operation of the plant. The balance of the water, according to the documents, is expected to be withdrawn from the Levisa and Tug forks of the Big Sandy River.

According to the report issued by SEG, the Chisolm Energy site only scored 69 percent of the points possible when evaluated as a CTL/CTG site.

In the report, the company identified that the Chisolm site, located near Ky. 194, was “not an ideal location for a potential alternative energy facility, particularly a biomass or CTL/CTG facility.”

The Buffalo Creek site, according to the report, scored even lower on the evaluation, garnering only 61 percent of the points possible in the CTL/CTG evaluation.

The evaluators’ opinion was that the site, “has very limited viability for the energy technologies reviewed.”

In addition, the report also cited a potential danger the necessary equipment would present to the low flight level paths of planes at the nearby Pikeville-Pike County Airport.

Amongst the dozens of sites examined as possible locations as CTL/CTG facilities, SEG found only two Pike sites which ranked in the top 20.

The most suitable site in the county, according to the report, lies at the area known as Big Shoal, across the Levisa Fork of the Big Sandy River from the City of Coal Run Village. The site, also owned at least partially by the Hatcher-Trimble Trust, scored 86 percent of the available points.

The site was hailed by Rutherford in a June 2008 press conference as the future location of a CTL/CTG facility. The site tour, led by Rutherford and attended by dignitaries including U.S. Rep. Hal Rogers, was painted by officials as an opportunity to show what could be located at the site, with a possible CTL/CTG facility being the main focus.

The records obtained by the News-Express do show why the second-most suitable site in the county was eliminated as a site. According to the documents, officials within county government spoke with City of Pikeville officials about the Marion Branch site, which met 83 percent of the available points as a CTL/CTG site.

However, in those conversations, it was identified that the proposed Transgas plants were not in line with the city's planning for Marion Branch, something with which the documents show Rutherford agreed.

In the statement issued by Rutherford's office last week, officials denied that the ownership of the sites by Hatcher and Hall had anything to do with the site selection.

"Property ownership was not the critical issue; however, suitability for issuance of an air quality permit was a critical issue," the statement said. "Final decision as to the site selection was made solely by the project manager (Transgas)."

Instead, the statement said, the project developer examined the Big Shoal site and found that it was "located beneath the mountaintop and was not a suitable location for an air quality permit."

Other possible sites, the statement said, were also considered, but declined for the same reason.

10 years later, Transgas has no working business to show for efforts

According to records in the New York Secretary of State's office, Transgas Energy was established as a company in 2001, then officially renamed Transgas Development Systems in 2005.

Despite being an officially-recognized business for 10 years, Transgas has no on-the-ground project in operation.

The company's website identifies four projects as being the company's focus: The Adams Fork coal liquefaction plant in Mingo County, the two plants proposed to be located in Pike County and a natural gas electrical generation plant proposed for Brooklyn, N.Y.

Documents connected to the Brooklyn project show that the company first filed for its necessary permits in 2001 and are awaiting approval more than a decade later.

While no timeline is identified in the emails for the opening of the Pike County facilities, Transgas President Adam Victor said earlier this year that he expects the Adams Fork facility to be producing gasoline by 2015.

But, at least one expert in the field of coal to liquid gas expressed concerns about the viability of such a project or group of projects in an email interview with the News-Express.

Dr. Harold Schobert, professor emeritus of fuel science of at Penn State University, said he has not heard of Transgas and has not seen their plans, but that the only reason he could imagine for the construction of three smaller plants, as opposed to one large plant would be the issue of permitting.

"I have never personally been involved in permitting but I understand from talking with others that the process can be time-consuming, with lots of perceived hoops to jump through," he said. "I've not seen any economics behind these three plants, but I'd still have to wonder if what they lose by giving up the economies of scale is really balanced out by the permitting issues."

To build the three smaller plants instead of one large plant, he said, would be a significantly more costly proposition.

But, Schobert said, even with the permitting issues explaining the construction of the plants, the question remains of whether the projects make economic sense.

“Economically, there seems to be scant, or no, evidence that coal-to-liquids can compete with petroleum projects,” he said. “... To put up a plant and sell a commodity product, gasoline, into a market where everybody has to sell at fairly close to the same price point, I would not be optimistic.”

The only mitigating factors, he said, would be if the company had a promise of federal or state incentives, or a guaranteed buyer.

Transgas’ president, Victor, has identified to the News-Express in the past that he planned to discuss the plants with the gasoline company Exxon Mobil, but it is unknown as of presstime whether any deal was ultimately worked out.

The projects will continue to see opposition from groups such as the Sierra Club.

Lauren McGrath, Sierra Club spokesperson, said last week that the organization opposes coal-to-liquid facilities on principle.

“We just think CTL facilities are a bad investment for Kentucky,” she said.

In addition, McGrath said the Sierra Club has doubts about the viability of any coal-to-liquid project proposed.

“These kinds of facilities are financially unfeasible unless they are heavily subsidized by state or federal government,” she said.

There are no coal-to-liquid fuel plants operating in the United States, McGrath said, and the organization does not believe there ever will be.

By Russ Cassady, Editor

After more than a month of inquiries by the News-Express, Pike County officials last week broke their silence on a pair of economic development projects planners say could cost billions of dollars and bring hundreds of jobs to Pike County.

However, the projects have been shrouded in secrecy since their inception. That, a News-Express investigation reveals, appears to have been by design.

Shrouded in secrecy from the beginning

On April 18, two Transgas subsidiaries submitted air quality permit applications, with a proposed construction start date of June, for the two plants — one on 150 acres of property adjacent to Ky. 194 near Phelps, named the Chisolm Energy site, and the other located near the Pikeville-Pike County Airport, referred to as the Buffalo Creek Energy site.

Both companies proposing the projects are subsidiaries of the New York-based Transgas Development Systems, which has led a much more open process in Mingo County, W.Va, where the company has announced plans to build a facility identical to the ones proposed in Pike County.

On May 20, the Kentucky Division of Air Quality ran legal advertisements in the Appalachian News-Express and Floyd County Times announcing that the permits were being considered and a public hearing was scheduled to be held on June 20.

According to the documentation, in the period between the advertisement and the hearing, written comments were also submitted. The only comments submitted questioning the project, according to the documents, were submitted by an attorney for the Sierra Club.

At the public hearing, the documents said, no “adverse” comments were issued.

Just over a week later, on June 28, the permits were issued for the projects, with no changes suggested or made, and construction began on a concrete pad at both sites.

The timeline was something questioned by Sierra Club attorney James N. Saul in his comments submitted on the project.

“At the outset, Sierra Club is concerned that KDAQ appears to have greatly accelerated the permit development process in an attempt to avoid permitting requirements ...” Saul wrote. “That KDAQ has given the permit application an unusually short review period is beyond dispute.”

However, a statement from the Kentucky Energy and Environment Cabinet said that the reason the permitting process for the proposed plants was accelerated was because of the importance of the projects.

“We issue permits on many different timelines due to having many different permit types and complexities,” the statement said. “Given these were important economic development projects, a team of engineers were assembled to expedite the issuance of the permits. That is a normal practice that has been in place for 30 years for high-priority projects.”

Documents obtained by the News-Express show that Kentucky Energy and Environment Cabinet officials assisted the county and the company in the air quality permit process, including suggesting that someone immediately request the public hearing for the permits, so that the projects would not be held up.

Media blackout planned and maintained by county

Pike Judge-Executive Wayne T. Rutherford’s office last week admitted the projects were intentionally kept out of the public’s eye, partially so the company could potentially obtain incentives from the state.

However, a statement from Rutherford’s office said that keeping the project out of the crosshairs of environmental groups such as the Sierra Club was the key reason for the public silence.

“The professional environmental community has worked to eliminate many permits in the mining industry, thus denying jobs for Pike County residents,” the statement said. “They have worked diligently to encourage the closing of coal-fired power plants, thus denying jobs for Pike County residents ... It is not the duty of the officials of Pike County to assist entities such as the Sierra Club in their efforts to attack the livelihood of the residents of Eastern Kentucky.”

However, documents show that the Sierra Club already knew about the proposed projects, as they were the only opposing comments issued in relation to the permit, which allowed the projects to be considered to be “under construction,” by July 1.

By having the projects considered to be “under construction,” the company escaped having to expose the air quality permits to new requirements set to go into effect July 1.

Emails obtained by the News-Express show Transgas was well aware of the importance of timing in connection with the project and, subsequently, the need for secrecy.

“We want to minimize the press on it,” Transgas official Randall Harris said in an email to Pike County Director of Energy and Community Development Charles Carlton. “If (it) is only in the local papers as an ad, that is perfect. If the opposition delays us even five days, we are dead. The schedule is too tight to risk it.”

Despite the alleged need for secrecy, the emails show that Rutherford wanted to hold a press conference on the project as early as May, immediately following the publication of the notices for the public hearings.

“(Rutherford) says we must get ahead of the situation and not let the project be defined by the news media,” Carlton wrote in an email.

However, the documents indicate that Transgas President Adam Victor contacted Gov. Steve Beshear in relation to Rutherford’s desire to hold a press conference. In an email from Harris to Carlton, Harris informs Carlton that Beshear told Victor, “no press until the permit is issued.”

While Transgas’ website lists the Adams Fork Energy project in Mingo County, with limited details about the project, the only mention of the Pike County projects are their names, Buffalo Creek Energy and Chisolm Energy, with the message that “details (are) to be announced soon.”

Rutherford says press reports would endanger CTL projects, economic development

Documents show the Pike County officials were informed that a press report on the projects would not impact the company's eligibility for economic incentives.

However, a statement issued from Rutherford's office threatened that the News-Express publishing a story on the potential project would endanger not only the economic incentives to be applied for by the Transgas subsidiaries, but also the county's ability to attract business in the future.

"If a precedent is set that the activities of potential economic development projects will be de facto publicly announced by the local press prior to the submission of applications, thus placing in jeopardy corporate eligibility for business incentives, it will become a matter of common knowledge that Pike County is not a place that meets the basic norms of business relationships," the statement said. "This may have a long-term chilling effect and deter companies from considering Pike County as a potential location for their business."

An attorney for the state Cabinet for Economic Development denied in an email that press reports would damage the project, after county officials contacted them due to a records request by the News-Express.

In response to inquiries by Charles Carlton regarding the News-Express' search for documents on the project, CED attorney John Bevington wrote that, while the report may upset the company, it would not affect the economic incentive application process.

"It is an issue only when a company confirms it is coming or enters into some form of legal obligation that confirms they are coming before the incentives are approved," Bevington wrote to Carlton in the email. "They cannot control what the press may print so long as there are no company quotes that confirm."

While the emails obtained in the open records request by the News-Express indicate some application for economic incentives has been made, the statement said the application will be made in November and are projected to be on the January agenda for the Kentucky Economic Development Finance Authority Board of Directors.

Documents show projects expected to cost \$11B

According to documents obtained by the News-Express, Transgas plans to build the two Pike County plants, and the Mingo County plant, at an expected cost of \$11 billion. The financial plan for the West Virginia Plant includes a plan to issue revenue bonds to be purchased by private investors for about \$3.6 billion.

In a letter to Erik Dunnigan, commissioner of the Kentucky Department for Business Development, Pike Judge-Executive Wayne T. Rutherford outlined the plans that Transgas had for the projects.

Included in those plans are the possibility of the creation of 1,000 jobs for four years as the plants are constructed, with 500 employees at each plant once opened, and a direct impact on the coal industry of the creation of 540 total mining jobs.

Each of the plants, Rutherford wrote, would require 7,500 tons of coal per day and would produce 18,000 barrels of the liquid fuel.