

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)

GESTAMP WIND NORTH AMERICA, INC. *
5120 Woodway Drive, Suite 9004 *
Houston, TX 77056 *

and *

ROTH ROCK WIND FARM, LLC *
7 St. Paul Street, Suite 820 *
Baltimore, MD 21202 *

Plaintiffs, *

v. * Case No.:

METTIKI COAL, LLC *
1717 South Boulder Avenue *
Tulsa, OK 74119 *

Serve On Resident Agent: *
Cogency Global Inc. *
1519 York Road *
Lutherville, MD 21093 *

and *

ALLIANCE RESOURCE *
MANAGEMENT, GP, LLC *
1717 South Boulder Avenue *
Tulsa, OK 74119 *

Serve On Resident Agent: *
Cogency Global Inc. *
1519 York Road *
Lutherville, MD 21093 *

and *

ALLIANCE RESOURCE GP, LLC *
1717 South Boulder Avenue *
Tulsa, OK 74119 *

Serve on Resident Agent:

Cogency Global Inc. *
1519 York Road *
Lutherville, MD 21093 *

and *

ALLIANCE RESOURCE PARTNERS, LP *
1717 South Boulder Ave, Suite 400 *
Tulsa, OK 74119 *

and *

ALLIANCE RESOURCE OPERATING *
PARTNERS, LP *
1717 South Boulder Avenue, Suite 400 *
Tulsa, OK 74119 *

and *

ALLIANCE HOLDINGS GP, LP *
1717 South Boulder Ave, Suite 400 *
Tulsa, OK 74119 *

and *

ALLIANCE GP, LLC *
1717 South Boulder Ave, Suite 400 *
Tulsa, OK 74119 *

and *

ALLIANCE COAL, LLC *
1146 Monarch Street *
Lexington, KY 40513 *

Defendants. *

* * * * *

COMPLAINT
AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiffs, Gestamp Wind North America, Inc., and Roth Rock Wind Farm, LLC, by and through their attorneys, H. Russell Smouse, Roy L. Mason, Lawrence R. Liebesman, and the law offices of Smouse & Mason, LLC, and hereby sue Defendants Mettiki Coal, LLC, Alliance Resource Management GP, LLC, Alliance Resource GP, LLC, Alliance Resource Partners, LP, Alliance Resource Operating Partners, LP, Alliance Holdings GP, LP, Alliance GP, LLC, and Alliance, LLC, and for cause state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Gestamp Wind North America, Inc., a corporation with its principal place of business in Houston, Texas, owns and operates Plaintiff Roth Rock Wind Farm, LLC.
2. Plaintiff Roth Rock Wind Farm, LLC, a Maryland corporation, is a wind farm that operates in Garrett County, Maryland.
3. Defendant Mettiki Coal, LLC, a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Tulsa, Oklahoma, owns, operates and/or controls the property located at 293 Table Rock Road, Oakland, Maryland, where it operates a coal cleaning/processing plant (hereinafter the “Mettiki Plant”).
4. Defendant Mettiki Coal, LLC, by operating the Mettiki Plant, regularly conducts business in Garrett County, Maryland.

5. Defendant Alliance Resource Partners, LP, is a Delaware limited partnership, with its principal place of business in Tulsa, Oklahoma, that owns, operates and/or controls defendant Mettiki Coal, LLC.

6. Defendant Alliance Resource Management GP, LLC is a Delaware limited liability company, with its principal place of business in Tulsa, Oklahoma, that is the managing general partner of defendant Alliance Resources Partners, LP.

7. Defendant Alliance Resource GP, LLC is a Delaware limited liability company, with its principal place of business in Tulsa, Oklahoma, that is the special general partner of defendant Alliance Resource Partners, LP.

8. Defendant Alliance Resource Operating Partners, LP is a Delaware limited partnership, with its principal place of business in Tulsa, Oklahoma, that is the intermediate partnership of defendant Alliance Resource Partners, LP.

9. Defendant Alliance Holdings GP, LP, is a Delaware limited partnership, with its principal place of business in Tulsa, Oklahoma, formed to own and control defendant Alliance Resource Management GP, LLC, the managing general partner of defendant Alliance Resource Partners, LP.

10. Defendant Alliance GP, LLC, a Delaware limited liability company, with its principal place of business in Tulsa, Oklahoma, is the general partner of defendant Alliance Holdings GP, LP.

11. Defendant Alliance Coal, LLC, is a Delaware limited liability company, with its principal place of business in Lexington, Kentucky, that is subsidiary of defendant Alliance Resource Partners LP and owns, operates and/or controls defendant Mettiki Coal, LLC.

12. Defendants Alliance Resource Partners, LP, Alliance Resource Management GP, LLC, Alliance Resource GP, LLC, Alliance Resource Operating Partners, LP, Alliance Coal, LLC, Alliance Holdings GP, LP and Alliance GP, LLC (collectively “Alliance”) acting individually and through their agent, defendant Mettiki Coal, LLC, caused the Plaintiff to incur damages in Garrett County, Maryland.

13. This is a claim at law over which the Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, as the citizenship of the Plaintiffs and Defendants is diverse and the amount in controversy for each claim exceeds Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs.

14. Venue in this District is proper because events giving rise to the action occurred in Garrett County, located entirely within the geographic boundaries for the District of Maryland.

FACTS COMMON TO ALL COUNTS

15. Plaintiffs started the commercial operation of Roth Rock wind farm in Garrett County, Maryland in July, 2011.

16. The Roth Rock wind farm (“Wind Farm”) is composed of 20 wind turbines with Nordex Technology of 2.5 Megawatts each, totaling 50 Megawatts of installed power.

17. Plaintiffs distribute 80% of their energy production to Delmarva Utility Company and 20% to the University of Maryland and the Maryland State General Department.

18. The Wind Farm borders and is directly adjacent to the Mettiki Plant. *See* Exhibit 1, aerial image of Wind Farm and Mettiki Plant.

19. At all times relevant hereto defendant Mettiki Coal, LLC has been extracting coal from within the State of West Virginia, trucking it to 293 Table Rock Road, Oakland, Maryland, and cleaning/processing the extracted coal at the Mettiki Plant.

20. At all times relevant hereto Mettiki Coal also has been conducting some coal extraction from its mine in Table Rock Maryland for processing at its facility.

21. The Mettiki Plant consists of four emissions units: a thermal dryer, a coal handling system, a 6000-gallon gasoline storage tank and a 150 ton per hour coal crusher.

Impact of Coal Dust

22. Together, these units on the Mettiki Plant property produce a large quantity of toxic coal dust that has, and continues to, travel off its property and deposit coal dust onto the turbines and machinery of the Wind Farm. *See* Exhibit 2, images of Wind Farm turbine equipment.

23. In the operation of processing coal, the Mettiki Plant has produced coal refuse that it has piled up in a disposal site located on the rill area (a small stream around the refuse pile) of the Mettiki site which is located approximately 350 yards from the Wind Farm. *See* Exhibit 3, images of the Mettiki Plant's coal refuse pile.

24. The coal refuse pile has substantially increased in surface area since the start of operation of the Wind Farm. The increase in surface area has reduced the proximity between the Wind Farm turbines and the Mettiki Plant's refuse pile. The decreased proximity of the Wind Farm and the Mettiki Plant's refuse pile, along with the removal of the tree cover on the Mettiki property between the Wind Farm and the refuse

pile, has resulted in substantially more fugitive dust covering the Wind Farm's turbines and equipment. *See* Exhibits 4-6, historical aerial images of Mettiki's Plants refuse pile.

25. Mettiki has undertaken no measures to prevent its toxic coal dust from leaving the refuse pile and reaching the Wind Farm.

26. One of the primary wind directions for the production of wind energy for the Wind Farm is the South-East wind. Currently, this wind direction has led to coal dust from the refuse pile blowing towards the wind turbines, depositing on the turbines and equipment, thereby substantially reducing production and permanently damaging the Wind Farm's equipment.

27. On information and belief, the coal dust monitoring and/or reduction systems of the Mettiki Plant are non-existent and/or inadequate to prevent the toxic coal dust from becoming fugitive from the Mettiki Plant and substantially damaging the blades and the equipment.

28. The coal dust continues to disrupt the effective functioning of the Wind Farm by significantly damaging wind turbines and equipment critical to the production of wind energy.

29. The coal dust has, and continues to, require additional maintenance and repair to be performed on the wind turbines and equipment due to the extensive damage from the coal dust.

30. Although the turbines and equipment are regularly cleaned and maintained, there are still large amounts of coal dust on the wind turbine equipment that continues to disrupt the effectiveness and efficiency of the wind turbines.

31. The extensive damage to the wind turbine equipment caused by the coal dust has not only required additional maintenance and repair for the equipment but has substantially reduced the average life span of the equipment.

32. Wind Turbines 5-12 of the 20 wind turbines at the Wind Farm have been most severely affected by the coal dust from the Mettiki Coal plant.

33. Each wind turbine has an AC unit that helps to maintain low temperatures and is vital to the function and effectiveness of the wind turbine.

34. Due to the coal dust accumulation, the AC unit from turbine 6 failed and had to be replaced at extraordinary expense, because it suffered extensive damage to the bearings due to the large amount of coal dust in the unit.

35. Each of the Wind Farm's turbines have three blades that spin and are crucial to the production of energy from wind and the overall efficiency of the wind farm.

36. Many of the blades at the Wind Farm are covered in coal dust, which has caused and continues to cause severe damage to the blades and the efficiency of the turbines to produce energy. *See Exhibit 2, pictures of the blades on turbine 7.*

37. The coal dust covering the wind turbine blades reduces the efficiency of the turbine's energy production and erodes the blades, thereby reducing the work life of the blades and requiring early replacement of the blades.

38. The replacement of a blade requires a crane, which costs approximately \$350,000 per week, a new blade, which costs approximately \$200,000, and at least 3 days for the replacement to occur, which adds approximately \$800-\$1,600 each day the turbine is out of service. Thus, the total cost of replacing one blade will be approximately \$400,000. This cost to the Plaintiffs is directly related to the activities of the Defendants.

Impact of Increased Refuse Pile Height

39. In addition to the substantial increase in surface area of the refuse pile and its proximity to the wind turbines since the start of operation of the Wind Farm, the height of the refuse pile has also significantly increased.

40. The coal refuse pile on the Mettiki Plant has substantially increased in size up to a current height of 65.8 meters. *See* Exhibit 7, Roth Rock Coal Mine Expansion Preliminary Analysis, Image 7, at page 6.

41. Due to the increased height of the refuse pile and the proximity between the Mettiki Plant's refuse pile and the Wind Farm's turbines, the refuse pile has significantly diminished the amount of wind passing through to the Wind Farm's turbines. *See* Exhibit 7, Image 6, at page 5.

42. The reduction in wind flow through the turbines has substantially reduced the net production of the Roth Rock wind farm and has negatively impacted the efficiency of the Plant's ability to provide power to its customers. *See* Exhibit 7, Image 8 and Table 2.

43. Moreover, the failure of the Mettiki Plant to cover the pile of coal refuse with soil and plant grass to maintain the cover has permitted the coal dust to become fugitive and cover the Wind Farm blades and turbine equipment. Mettiki has neglected to sufficiently cover the refuse pile as they have increased the surface area of the refuse pile. *See* Exhibits 4-6 for historical aerial images of Mettiki's Plants refuse pile.

44. As a result of the loss in production due to the fugitive dust from the refuse pile, the Roth Rock wind farm has incurred significant damages and will continue to incur significant damages in the future.

45. As a result of the increase in height of the refuse pile from 2011 to its current height of 65.8 meters, the Wind Farm has incurred revenue losses of approximately \$ 219,865.47.

46. At its current height of 65.8 meters, the Wind Farm will continue to incur annual losses in revenue of approximately \$ 103,801.74.

47. Upon information and belief, the Defendants' plan to increase the height of the refuse pile by 35.5 meters, up to 97.5 meters, which would further disrupt the production of the Wind Farm, thereby decreasing its productivity by a larger percentage. See Exhibit 3, Annex 1.

48. If Mettiki Coal increases the height of the pile to 97.5 meters, the Wind Farm would incur annual losses in revenue of approximately \$ 142,248.68.

49. Currently, the Defendants continue to operate the Mettiki Plant that produces vast quantities of fugitive coal dust that continue to adhere to and damage the Wind Farm turbines and equipment.

50. The Defendants also continue to add to the height of the coal refuse pile at the Mettiki Plant, which disrupts the efficient operation of the Wind Farm, damages its blades and turbines, and requires otherwise unnecessary maintenance repairs.

COUNT I – TRESPASS

51. The preceding paragraphs are incorporated by reference.

52. By its acts and omissions, the defendants, acting individually and/or in concert, have interfered with the Plaintiffs' interest in the exclusive possession and operation of the Wind Farm by causing the impact and adherence of coal dust onto the Wind Farm's equipment and interfering with the flow of wind into the wind turbines.

53. The coal dust that the Defendants caused to be deposited onto the turbines and equipment of the Wind Farm constitutes a physical invasion by a toxic material that has substantially decreased the production of the Roth Rock wind farm.

54. The Defendants' acts and omissions also caused the Plaintiffs to suffer extensive damage to their wind turbines and equipment, which will require additional maintenance and expensive repair.

55. The presence of the high level of coal dust on the Wind Farm turbines has caused and will continue to cause the Plaintiffs to suffer a loss in production from their turbines and increased costs.

56. Finally, the Defendants' operation of the Mettiki Plant has caused and will continue to cause a drastic reduction in the property value of the Wind Farm and its turbines.

WHEREFORE, Plaintiffs respectfully demand judgment for compensatory damages against the above listed Defendants, jointly and severely, in excess of \$75,000, as well as attorney's fees and costs, prejudgment interest, post judgment interest, punitive damages, and any other costs or relief this court deems appropriate.

COUNT II – NEGLIGENCE

57. The preceding paragraphs are incorporated by reference.

58. The Defendants owed a duty of reasonable care to the Plaintiffs who would foreseeably be harmed by the negligent operation of the Mettiki Plant by the Defendants.

59. The Defendants failed to exercise reasonable care in the operation of the Mettiki Plant by, *inter alia*, placing the Mettiki Plant's refuse pile unreasonably close to

the Roth Rock wind farm, failing to properly maintain the height of the refuse pile to avoid damaging Plaintiffs and failing to take necessary precautions including, *inter alia*, installing and maintaining adequate dust monitoring and prevention systems including ground cover, within the Mettiki Plant to prevent the coal dust from blowing onto the Plaintiffs' property and equipment.

60. The Defendants' failures to exercise reasonable care in the operation of the Mettiki Plant are the actual and proximate cause of the Plaintiffs' damages, detailed below.

61. Because of the Defendants' acts and omissions, Plaintiffs' wind turbines and equipment have suffered and will continue to suffer severe damage that will require additional maintenance and expensive repairs.

62. The Plaintiffs have suffered and will continue to suffer a loss in wind energy production due to the Mettiki Plant refuse pile blocking wind from turning the wind turbines at the rate of speed appropriate for the wind speed at that location.

63. The presence of the coal dust on the Wind Farm and the huge refuse pile of the Mettiki Plant has caused and will continue to cause the Plaintiffs to incur a loss of production, effectiveness and efficiency in using their property, resulting in an increase in costs to the Plaintiffs.

64. Finally, the Defendants' operation of the Mettiki Plant has caused and will continue to cause a drastic reduction in the property value of the Roth Rock wind farm.

WHEREFORE, Plaintiffs respectfully demand judgment for compensatory damages against the above listed Defendants, jointly and severely, in excess of \$75,000,

as well as attorney's fees and costs, prejudgment interest, post judgment interest, punitive damages, and any other costs or relief this court deems appropriate.

COUNT III – NUISANCE

65. The preceding paragraphs are incorporated by reference.

66. The Defendants' operation of the Mettiki Plant, which caused and continues to cause large quantities of toxic coal dust to invade the Roth Rock wind farm, substantially interferes with the Plaintiffs' use of its property.

67. Because of the Defendants' acts and omissions, Plaintiffs have incurred and will continue to incur a significant loss in production from the wind farm, damage to wind turbines and equipment, plus additional maintenance cost.

68. The coal dust that the Defendants deposited onto the turbines and equipment of the Wind Farm constitutes a physical invasion by a toxic material that has and will continue to negatively affect the production of the Wind Farm.

69. The presence of the extraordinary level of coal dust on the Wind Farm has caused and will continue to cause the Plaintiffs to incur a substantial loss in production from the property, additional repairs, replacement, cost and expense.

WHEREFORE, Plaintiffs respectfully demand judgment for compensatory damages against the above listed Defendants, jointly and severely, in excess of \$75,000, as well as attorney's fees and costs, prejudgment interest, post judgment interest, punitive damages, and any other costs or relief this court deems appropriate.

Respectfully submitted,

SMOUSE & MASON, LLC

_____/s/_____
Roy L. Mason (00922)
H. Russell Smouse (01637)
Lawrence R. Liebesman (04986)
502 Washington Avenue, Suite 710
Towson, MD 21204
410-269-6620
410-269-5452 *facsimile*

DEMAND FOR JURY TRIAL

Plaintiffs, Gestamp Wind North America, Inc., and Roth Rock Wind Farm, LLC,
by and through their attorneys, H. Russell Smouse, Roy L. Mason, Lawrence R.
Liebesman, and the law office of Smouse & Mason, LLC, hereby demand a trial by jury
on all counts in the Complaint.

Respectfully submitted,

SMOUSE & MASON, LLC

_____/s/_____
Roy L. Mason (00922)
H. Russell Smouse (01637)
Lawrence R. Liebesman (04986)