



U.S.

## APNewsBreak: Company With Chemical Spill Ties Cited 8 Times

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NITRO, W.Va. — A few towns over from the chemical plant that leaked a coal-cleaning mixture into the drinking water of 300,000 West Virginians last year, a new company run by some of the same people is being cited for similar environmental violations.

State regulators have written up the new firm, Lexycon LLC, eight times since September for pouring chemicals without a permit, lacking proper "last-resort" walls to contain spills, and hosting tanker-trailers full of unknown chemicals, among other infractions, according to records reviewed by The Associated Press.

Some of the infractions at Lexycon still haven't been addressed despite three site-wide inspections and dozens of smaller visits by regulators from the West Virginia Department of Environmental Protection since May, state reports show.

Inspectors even found the same little-known chemical that leaked from a Freedom Industries Inc. facility and tainted the water supply for West Virginia's capital city, despite the Lexycon owner's promise to a federal judge that his company wouldn't touch the substance.

The pollution at Freedom's Elk River operation triggered a tap water ban that brought the region to a standstill for days, with residents unable to shower or use their faucets and restaurants and other businesses shuttered for lack of clean water. The spill also sparked criticism in Congress that existing environmental rules aren't adequate, particularly in West Virginia, where the energy industry's heavy presence has always come with the risk of disaster.

"I've noticed that when something goes wrong, you sell the company, you change the name," said Maya Nye of People Concerned About Chemical Safety, an advocacy group in the state. "Then suddenly, it looks like a shiny new package, but

the way things operate is very similar. It's just kind of status quo."

Two consultants who have worked with Lexycon are among six former Freedom officials charged last month over last January's massive spill.

An FBI agent said in an affidavit that Freedom officials knew for a decade of the crack in the secondary containment wall that enabled the chemical to seep into the Elk River. They also didn't inspect leaky World War II-era tanks and shrugged off plans to decommission them, the agent said.

Shortly after the spill, Freedom moved its chemicals away from its Elk River site to another company complex less than a half-mile from the Kanawha River in the town of Nitro, where a rusty water tower and plumes of white smoke from the nearby coal-fired power plant rise in the background.

But state environmental inspectors soon recognized shoddy safeguards at the Nitro site, too: Containment walls filled with holes that could let materials seep into a stormwater ditch that drains into the Kanawha.

Freedom filed for bankruptcy within days of the spill. Three months later, Lexycon was founded by David Carson, a chemical firm owner who had done business with Freedom and bought the Nitro location.

Before he approved the transaction in May, U.S. Bankruptcy Judge Ronald Pearson called it "a real positive in the case" that Lexycon was hiring former Freedom employees.

"They're the ones that know the business," Mark Welch, chief restructuring officer during Freedom's bankruptcy case, said in court. "If I was buying, I would want to make sure I had the best assets available."

At least three prominent players at Freedom, including two now facing federal charges in the spill, went on to have strong ties to Lexycon:

— Former Freedom president and co-owner Dennis Farrell, who faces up to three years in prison on pollution charges in the spill, consults now for Lexycon, his lawyer Michael Carey said during an arraignment last week. Farrell works in a sales role but isn't officially an employee and has no ownership stake in Lexycon, Carson testified.

— Robert Reynolds, the Freedom environmental consultant who also is charged in the spill, greeted state inspectors onsite as a Lexycon representative in August, their report shows. Welch said Reynolds has since left the company. He was charged in a document called an information, which generally means someone is cooperating

with an investigation.

— Lexycon president Kevin Skiles had owned 5 percent of Freedom's shares and was a Freedom research and technology official.

According to bankruptcy court filings, Carson is a friend of Gary Southern, the former Freedom president who angered many by swigging from a bottle of water and bemoaning his long day at a televised news conference the day after the spill.

Carson made a concerted effort in his bankruptcy testimony in May to say that Southern would have nothing to do with Lexycon. At one point, the company's website also strongly denied ties to Southern, who could spend up to 68 years in prison if convicted of pollution and fraud.

In July 2013, Southern sold a condo in Naples, Florida, to a company he and Carson ran. Southern stepped down from the company a few weeks later, Florida corporation records show.

A month before Southern sold the condo, Joy Schindler, Lexycon's sole stockholder, used the Naples condo's address to register "Lexycon" in Florida as a fictitious name under which she could do business, well before it became a full-fledged corporation. Schindler also was engaged to Carson, Welch said.

She had "other business interests" that required using the Lexycon name, Christopher Smith, an attorney for Lexycon, wrote in a letter to the AP this week.

Carson made an important promise to the bankruptcy judge in May: Lexycon wouldn't deal in the chemical known as MCHM, the main one that Freedom spilled.

"It will not be on the site," Carson said in court, explaining why residents still raw over the spill a few months earlier shouldn't worry about the new company. "It's currently there. The day I take over is the last day it will be there."

But when inspectors showed up at Lexycon in August, a tanker trailer of MCHM was sitting there without proper secondary containment, according to a state notice of violation. The chemical was gone when inspectors took an inventory in October.

During another visit last week, state inspectors found another violation — they couldn't figure out what was in two tanker trailers or to whom they belonged.

The state has given the company 20 days to respond to the latest five violations, issued last week. Any fines would be determined later, environmental department spokeswoman Kelley Gillenwater said.

So far, the strongest action the state has taken against Lexycon came in September, when regulators ordered the company to stop storing certain chemicals

until it obtained a permit, which it eventually did.

Lexycon is addressing the issues raised by the state "in the usual course," wrote Smith, the company attorney.

Nye, the chemical safety advocate, said it seems the state is paying close attention now.

But Evan Hansen, president of the environmental consulting firm Downstream Strategies, in Morgantown, West Virginia, said the chemical industry executives involved don't seem to have learned their lessons.

"The fact that they're not able to meet the most basic requirements of the Clean Water Act suggests that they're just not trying very hard," Hansen said.

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