



**NEWS RELEASE
FOR IMMEDIATE RELEASE
NOVEMBER 8, 2010**

Contact:
Jim Hecker: (202) 797-8600

**PUBLIC JUSTICE WINS U.S. APPEALS COURT DECISION REQUIRING
COAL MINE CLEANUPS**

The state of West Virginia will have to clean up toxic acid mine drainage from abandoned coal mines under a federal appeals court decision issued on Monday.

Public Justice filed *West Virginia Highlands Conservancy v. Huffman*, arguing that discharges from the abandoned mines should comply with federal water pollution limits. The state had asked the court for an exemption from the Clean Water Act's permitting requirement, but the U.S. Court of Appeals for the Fourth Circuit flatly rejected the request.

“[W]e are not in the business of rewriting laws whenever parties allege it is difficult to comply with them,” the decision reads. “Exempting the state on those grounds risks sending the wrong message to mining companies: don’t bother complying with the permits, because the state won’t either.”

“The state was running these sites off the books to try to escape accountability for necessary water treatment,” said Jim Hecker, Public Justice’s Environmental Enforcement Director and lead counsel in the case. “The district court ordered the state to obtain the required discharge permits, and the Fourth Circuit today affirmed that decision. The state will now have to comply with the water quality standards it is violating. We also intend to force the state to obtain permits for its discharges at 131 similar mine sites in West Virginia that were not included in the first case.”

On behalf of the West Virginia Highlands Conservancy and the West Virginia Rivers Coalition, Public Justice sued the West Virginia Department of Environmental Protection (WVDEP) for violating the federal Clean Water Act by not writing pollution permits with discharge limits at 21 abandoned mining sites in north-central West Virginia. WVDEP took over these sites after the mine operators went bankrupt, and is now saddled with the long-term problem of reclaiming the sites and treating storm water runoff contaminated with the mines pollution.

WVDEP did not require coal operators to post bonds sufficient to cover the costs of cleanup, or impose coal severance taxes high enough to function as a backup financing

mechanism when the operators defaulted on those bonds. Instead, the State set the bond amounts and taxes artificially low to protect the coal industry. The State also tried to immunize itself from citizen enforcement actions by refusing to obtain federally-enforceable discharge permits after it took over the sites and began operating the treatment systems.

“The state will have to charge the coal companies large amounts to pay for these pollution control improvements,” said co-counsel Joe Lovett of the Appalachian Center for the Economy and the Environment in Lewisburg, WV. “The court’s ruling will require WVDEP to stop protecting the coal industry from the paying the full environmental costs of coal mining.”

Public Justice brought this case as part of its continuing campaign to force West Virginia to reform and improve its coal mine permit system. A key part of that system is the State’s bond fund to reclaim abandoned mines. This fund has never had enough money, and as a result thousands of acres of abandoned mines have sat unreclaimed, and hundreds of polluted streams have been left untreated. An earlier Public Justice lawsuit, filed in 2001, required WVDEP to increase coal severance taxes by tens of millions of dollars to rescue the fund from insolvency. But that increase was still not enough because WVDEP’s accounting system for the fund never evaluated the full legally-required costs of treating polluted acid mine drainage at the sites that it operated.

If WVDEP has to treat these discharges to the levels that federal law requires, then coal taxes paid into the bond fund will have to be much higher than they are now. The recent court victory will require WVDEP to obtain permits making these treatment obligations mandatory.

###

Public Justice is America’s public interest law firm, supported by – and calling on – a nationwide network of more than 3,000 of the nation’s top lawyers to pursue precedent-setting and socially significant litigation. It has a wide-ranging litigation docket in the areas of consumer rights, worker safety, civil rights and liberties, toxic torts, environmental protection, and access to the courts. The Public Justice website is www.publicjustice.net.

Public Justice is the principal project of the Public Justice Foundation, a nonprofit membership organization with offices in Washington, DC and Oakland, CA. The Public Justice Foundation President is Harry Deitzler, of Hill, Peterson, Carper, Bee & Deitzler in Charleston, WV, and the Foundation’s West Virginia State Coordinator is Troy Giatras of The Giatras Law Firm, also in Charleston.