

August 28, 2009

**Public Justice has just won a second major decision requiring West Virginia to clean up toxic acid mine drainage from abandoned coal mines so that discharges comply with water pollution limits. The August 24, 2009 ruling by the U.S. District Court for the Southern District of West Virginia could also force the State to make the coal companies pay for millions of dollars of pollution reductions. Public Justice has now won two court decisions this year in the Northern and Southern Districts of West Virginia, covering mine sites in both districts.**



West Virginia must clean up toxic acid mine drainage from abandoned coal mines.

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 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 court agreed with us that, by so doing, the State was violating federal law.

WVDEP has appealed the first decision to the U.S. Court of Appeals for the Fourth Circuit, and we expect it to appeal the second decision as well. Public Justice's appellate brief is due to be filed in September. Meanwhile, WVDEP has already begun processing permit applications for 18 of the sites.

**To read the Northern District decision, [click here.](#)**

**To read the Southern District decision, [click here.](#)**

**To see a news article on the most recent decision, [click here.](#)**

"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. "Two district courts have now ordered the State to obtain the required discharge permits for 21 bond forfeiture sites. Once it does, the State will have to comply with the water quality standards it is now violating."

"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."

Arthur Bryant  
Executive Director  
Public Justice  
& the Public Justice Foundation

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