

Press Release

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Citizen Groups, Public Justice, and Appalachian Center Challenge West Virginia's Failure to Cleanup Acid Mine Drainage

The West Virginia Highlands Conservancy, the West Virginia Rivers Coalition, Public Justice, and the Appalachian Center for the Economy and the Environment took two important actions today to challenge the adequacy of West Virginia's program to clean up mining sites that are polluting West Virginia's streams with toxic acid mine drainage. The state has dropped the ball on fixing its underfunded bond forfeiture program, and has also significantly underestimated how much that program will cost because it does not treat acid mine drainage to the levels required by federal and state law.

1. Motion to Reopen. The Conservancy filed a motion in federal district court to reopen its 2000 federal case that forced the state to increase the size of its bond fund for reclaiming forfeited mine sites. This fund, called the Special Reclamation Fund, is designed to reclaim sites where the bond is forfeited by the owner before reclamation is completed, and the state must then step in to complete the reclamation. In 2003, the fund had a massive deficit. In response to the Conservancy's lawsuit, the state increased the coal tax to try to close that deficit, and appointed an Advisory Council to monitor the fund's financial health. When former Judge Haden administratively closed that case in 2003, he stated that the Conservancy could reopen it if West Virginia Legislature failed to carry out the Advisory Council's recommendations. That condition has now been satisfied. In its 2007 annual report, the Council recommended that the legislature set up a new \$175 million trust fund to treat polluted water from future forfeited mine sites. The legislature adjourned this month without taking any action on that recommendation.

"The longer we wait, the harder it will be to fund the trust," said Cindy Rank, Chair of the Mining Committee of the Conservancy. "Coal mining will decline as resources are depleted, but the money needed to treat polluted water will remain constant or even increase. Acid mine drainage will likely continue for hundreds of years. Unless we act now to build an adequate fund, the last mining company and ultimately the public will be left holding the tab for an enormous bill."

"Yielding to pressure from the coal industry, the regulatory agency has dragged its feet for over fifteen years on this issue and time is running out," she added.

"Once the case is reopened, the Conservancy can renew its demand that the federal Office of Surface Mining, Reclamation and Enforcement declare the state in default on its federal responsibilities under its state mining program, and consider revoking the state's authority over its bonding program," said Jim Hecker, Public Justice's Environmental Enforcement Director.

The motion to reopen is being filed in *West Virginia Highlands Conservancy v. Kempthorne*, Civil No. 2:00-1062, in the U.S. District Court for the Southern District of West Virginia in Charleston. The Conservancy is represented in that case by Jim Hecker of Public Justice in Washington,

D.C., Joe Lovett of the Appalachian Center in Lewisburg, W.Va., and Pat McGinley and Suzanne Weise in Morgantown, W.Va.

2. Notice of Intent to Sue for Unpermitted Discharges. The Highlands Conservancy and the Rivers Coalition sent a letter notifying the West Virginia Department of Environmental Protection that it will be sued under the federal Clean Water Act after a required 60-day waiting period. The letter charges that DEP has failed to obtain required permits for discharges of polluted water at 22 mining sites with forfeited bonds. Under federal and state law, discharges from these sites must meet specified treatment and water quality standards. DEP is responsible for complying with those standards because it operates the water treatment systems at those sites. DEP's own internal monitoring data show that these sites are discharging acid mine drainage that frequently violates those standards, often by large amounts.

“The state is running these sites ‘off the books’ to try to escape accountability for necessary water treatment,” said Liz Garland, Executive Director of the West Virginia Rivers Coalition. “Acid mine drainage from these sites is not being treated adequately, and the streams are being polluted illegally.”

“We will ask the Court to order DEP to obtain permits for these discharges,” said Jim Hecker. “Once permits are issued, we will be able to enforce the standards that DEP is now violating.”

“By not obtaining permits or complying with required standards, DEP has significantly underestimated the costs of treating acid mine drainage at these sites,” said Joe Lovett of the Appalachian Center. “The bond fund for water treatment must be increased to account for the full cost of meeting treatment requirements at all sites.”