

## Press Release

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### **Citizen Groups and WVDEP Agree on Plan to Clean Up Acid Mine Drainage**

The West Virginia Highlands Conservancy, the West Virginia Rivers Coalition, and the Sierra Club today filed two new citizen suits under the Clean Water Act against the West Virginia Department of Environmental Protection, charging that WVDEP has failed to obtain permits for pollution discharges at 171 mine sites with forfeited bonds. Simultaneously, the parties filed proposed consent decrees settling both cases and establishing a plan for WVDEP to issue permits and clean up these mining sites that are polluting West Virginia's streams with toxic acid mine drainage.

The new actions are a follow-up to two successful citizen suits filed by the Conservancy and the Coalition in 2007 that required WVDEP to issue permits and clean up 21 similar bond forfeiture sites. Under federal and state law, discharges from these sites must meet specified treatment and water quality standards. WVDEP is responsible for complying with those standards because it operates the water treatment systems at those sites. WVDEP's own internal monitoring data show that these sites are discharging acid mine drainage that frequently violates those standards, often by large amounts.

The new decrees cover all 171 remaining bond forfeiture sites in West Virginia—89 in the Northern District of the U.S. District Court and 82 in the Southern District of that Court. The decrees require WVDEP to prepare an inventory and priority ranking of the sites, based on the pollution loading at each site. The decrees also require WVDEP to submit a treatment cost estimate to the Special Reclamation Fund Advisory Council by December 1, 2011. The Council can then use that estimate to recommend adjustments in the coal severance tax so that WVDEP has adequate funding to install necessary treatment equipment. The decrees also establish a schedule under which WVDEP will issue 50 permits per year for the 171 sites and establish limits in each permit that will require compliance with state water quality standards.

“The state was running these sites ‘off the books’ to try to escape accountability for necessary water treatment,” said Cindy Rank, Mining Chair of the Conservancy. “Now that they are properly ‘on the books,’ WVDEP will calculate, for the first time, the full treatment costs at these sites. We have been asking for that calculation for over twenty years.”

“By not obtaining permits or complying with required standards, DEP significantly

underestimated the costs of treating acid mine drainage at these sites,” said Jim Hecker, Environmental Enforcement Director of Public Justice. “The special reclamation fund for water treatment will now need to be increased to account for the full cost of meeting treatment requirements at all sites.”

“By low-balling the true costs of fixing acid mine drainage, the WVDEP enabled coal operators to avoid paying the real costs of producing coal throughout West Virginia,” said Jim Sconyers, Chair of the West Virginia Chapter of the Sierra Club. “This settlement will put the cost right where it belongs - with the coal companies and their requirement to fund the special reclamation fund.”

“We are pleased that WVDEP agreed to avoid further litigation and devote its resources to fixing the problem,” said Shanda Minney, Executive Director of the West Virginia Rivers Coalition. “Once permits are issued, we will be able to enforce the water quality standards that DEP is now violating.”

“It’s important that the bond fund be increased as soon as possible,” said Joe Lovett, Executive Director of the Appalachian Center. “Coal mining will decline as resources are depleted, but the money needed to treat polluted water will remain constant or even increase. 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.”

The groups are being represented in these cases by Jim Hecker of Public Justice in Washington, D.C. and Joe Lovett of the Appalachian Center in Lewisburg, W.Va.