Appeals Court Upholds EPA Block on W.Va. Mine

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MORGANTOWN, W.Va. (AP) — The U.S. Environmental Protection Agency had the legal authority to retroactively veto a water pollution permit for one of West Virginia's largest mountaintop removal coal mines years after it was issued, a federal appeals court ruled Tuesday.

The U.S. Court of Appeals for the District of Columbia reversed a lower court's ruling in a case that has economic implications across coal country and potentially the nation. The case goes back to U.S. District Court for further proceedings.

The appellate court directed Judge Amy Berman Jackson to address the coal industry's argument that the EPA's action was an "arbitrary and capricious" violation of the Administrative Procedure Act, an issue she has not previously ruled on.

The holder of the permit, St. Louis-based Arch Coal, said it was disappointed in the ruling, but downplayed it as being "related to procedural aspects" of the case.

But U.S. Rep Nick Rahall, D-W.Va., warned the ruling could "open the floodgates to disrupting coal mining in West Virginia and elsewhere" and "upend the traditional balance that has existed between the states and the federal government in the permitting process."

He vowed to reintroduce the Clean Water Cooperative Federalism Act, which made it through the Republican-controlled House last year, to the bar EPA "from using the guise of clean water" to hinder the industry.

In January 2011, the EPA revoked a permit that the U.S. Army Corps of Engineers had issued four years earlier to Arch and its Mingo Logan Coal Co. subsidiary. The EPA concluded that destructive and unsustainable mining practices at the 2,300-acre Logan County mine would cause irreparable environmental damage and threaten the health of communities nearby.

Jackson later ruled that EPA had overstepped its authority by revoking a permit that had been thoroughly reviewed and properly issued by the corps.

Her ruling was panned by environmentalists and widely praised by coalfields politicians, both Democrats and Republicans who regularly complain about what they describe as a "war on coal" by President Barack Obama's administration.

Coal companies and other industries argued that the EPA's maneuver effectively such prevents permits from ever being considered final, and that could have a chilling effect on new construction and economic development nationwide.

Mountaintop removal is a highly efficient but destructive form of strip mining that

blasts apart mountain ridge tops to expose multiple coal seams. The resulting rock and debris is dumped in streams, creating so-called valley fills. Spruce No. 1 would have buried nearly 7 miles of streams.

It was only the 13th time since 1972 that the EPA had used the veto authority and the first time it had acted on a previously permitted mine. The agency said it reserves the power for rare and unacceptable cases, but Jackson declared the action "incorrect and unreasonable."

Last fall, Arch argued that Congress never intended to give the EPA "unbridled power" over water-pollution permits for coal mines, and that final authority to issue, oversee and enforce permits issued under section 404 of the Clean Water Act lies solely with the corps.

The EPA countered that while the Clean Water Act lets the corps issue permits for the dumping of fill material, another section of the law gives the EPA the unambiguous right to "prohibit, deny, restrict or withdraw specification of fill disposal sites."

That power was created in a legislative compromise the EPA says was intended to let the agency do its job and prevent unacceptable environmental damage. The EPA says it can invoke that authority before, during or after the corps' permitting process.

The appellate decision, written by Judge Karen LeCraft Henderson, says Congress made its intent plain in "unambiguous language" giving EPA "a broad veto power extending beyond the permit issuance." Nor does the law impose a time limit for EPA to act, she wrote, instead empowering it to do so whenever it determines an "unacceptable adverse effect" will result.

National Mining Association President Hal Quinn said the decision "has pulled the regulatory rug out from under the feet of U.S. companies."

"As a result, a cloud of uncertainty now hangs over any project," he said, "and companies will no longer have the assurance required to encourage investments, grow our economy and create U.S. jobs."

U.S. Rep. Shelley Moore Capito, R-W.Va., said the "misguided" decision could translate to lost jobs.

"If the EPA can take back a permit from a coal mine in West Virginia," she said, "they can do the same to any business in America."

But Dianne Bady of the Ohio Valley Environmental Coalition called the ruling "a logical understanding of EPA's role to protect the environment and to protect people from environmental harm."

"The U.S. Army Corps of Engineers has literally overseen the destruction of Central Appalachia and EPA oversight is needed to stop it," said Joe Lovett of Appalachian

Mountain Advocates.

Earthjustice attorney Emma Cheuse said communities "can finally breathe a sigh of relief knowing that EPA always has the final say to stop devastating permits for mountaintop removal mining.

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