



March 28, 2013

## FEDERAL COURT ADDRESSES LANDOWNER'S LIABILITY FOR ENVIRONMENTAL CONDITIONS CREATED BY PAST MINERAL EXTRACTION OPERATIONS

A case presently pending in a federal district court in Virginia may have broad implications for owners of land that have been used in the past for mineral extraction operations. The case, *Southern Appalachian Mountain Stewards v. Penn Virginia Operating Co., LLC*, Case No. 12-cv-00020 (W.D. Virginia), is a citizen suit under the 33 U.S.C.A. §§ 1251-1387 ("CWA"), brought by certain non-governmental public interest groups against the owner of properties formerly used for coal-mining operations. The suit alleges that the properties contain piles of waste comprised of coal mixed with mining byproducts known as "gob piles;" that the gob piles tend to collect rain and surface water and slowly release water, along with heavy metals and pollutants, into adjacent waterways; and that this seepage often results in erosion, sedimentation, and adverse chemical content in neighboring streams. The suit claims that Penn Central has discharged pollutants from the gob piles, which are alleged to be point sources of discharges, into waters of the United States without a permit in violation of the CWA. The plaintiffs further allege that they gave notice of their intent to file the suit (the "NOI") to Penn Central, the EPA, and the Virginia Department of Environmental Quality, but neither agency commenced a civil or criminal action within 60 days to require compliance with the CWA; therefore, the plaintiffs filed suit. The plaintiffs allege that Penn Virginia is liable for civil penalties and attorney's fees and costs under the CWA, and also request injunctive relief enjoining Penn Virginia from allowing unpermitted discharges of pollutants from its property and an order requiring Penn Virginia to remedy the environmental contamination and restore the "environment" to its prior uncontaminated condition.

Penn Virginia filed a motion to dismiss, alleging that the plaintiffs' allegations were insufficient to state a plausible claim for relief under the CWA. Specifically, Penn Virginia argued that many of the plaintiffs' allegations were not "facts" because they were largely based on information contained in a report written by a separate private entity that had evaluated the sites, and were not based on the plaintiffs' personal knowledge or observation. In a January 3, 2013, ruling, the Court rejected this argument, however, and reasoned that the argument related to the "sufficiency and weight of the evidence, and not to the facial plausibility of the ... complaint."

Penn Virginia also sought dismissal because, while the plaintiffs based their NOI letter on the private entity's report, they improperly included additional photographs and factual allegations in the complaint that exceeded the scope of the private report. The Court also rejected this argument and ruled that the plaintiffs' complaint was not limited to the four corners of the private report. The Court further reasoned that the NOI letter included sufficient allegations to give Penn Virginia adequate notice of all alleged violations. The Court thus held that plaintiffs had pleaded sufficient facts to alleged violations of the Clean Water Act, and denied Penn Virginia's motion to dismiss.

Although the case has not been decided on its merits, it indicates that a landowner may be responsible for environmental violations that arise from conditions that exist on its property, even if the landowner was not involved in the past activity that created those conditions. The case will be closely watched by the owners of properties that were formerly used for mineral extraction operations.

— [Tarak Anada](#)



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*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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