



Daily Report for Executives™

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Environment

Discharge Permit Renewal Makes Appeal Moot, Court Says

BNA Snapshot

S. Appalachian Mountain Stewards v. Red River Coal Co., Inc., 4th Cir., No. 15-01522, 12/11/15

Key Development: Fourth Circuit rules Virginia's issuance of renewed water discharge permit to a coal company means that environmental groups' appeal of adverse district court decision is moot.

 Gavel By **Lars-Eric Hedberg**

Dec. 14 — An appeal by environmental groups of an adverse ruling on their claim that a coal company violated a condition of its water discharge permit is moot because Virginia regulators issued a renewed permit while the appeal was pending, a federal appeals court said (*S. Appalachian Mountain Stewards v. Red River Coal Co., Inc.*, 4th Cir., No. 15-01522, 12/11/15).

The U.S. Court of Appeals for the Fourth Circuit **granted** a motion filed by Red River Coal Co. Dec. 11 to dismiss the appeal filed by Southern Appalachian Mountain Stewards, the Sierra Club and Appalachian Voices.

Red River moved to dismiss the appeal after the Virginia Division of Mined Land Reclamation issued a renewed permit on Sept. 3. The groups did not oppose the motion.

The groups had alleged that Red River violated its state-issued National Pollution Discharge Elimination System permits at four of its mountaintop mines by sending impermissible amounts of mining refuse into the South Fork of the Pound River in Wise County. They asked the U.S. District Court for the Western District of Virginia to enjoin future violations and impose civil penalties.

On April 14, the district court ruled that the groups failed to show that the state agency made inadequate findings when it determined that the total maximum daily load (TMDL) should be implemented using a staged approach and Red River complied with the TMDL requirements (*S. Appalachian Mountain Stewards v. Red River Coal Co., Inc.*, **2015 BL 104621**, W.D. Va., No. 14-cv-00024, 4/14/15; **72 DER A-35, 4/15/15**).

Benjamin A. Lockett and Isak Howell of Appalachian Mountain Advocates, Lewisburg, W.Va, represented the groups.

Brooks M. Smith and Ryan J. Pedraza of Troutman Sanders LLP, Richmond, and Stephen M. Hodges and Seth M. Land of Penn Stuart & Eskridge, Abingdon, Va., represented Red River Coal.

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For More Information

The order of the U.S. Court of Appeals for the Fourth Circuit in *Southern Appalachian Mountain Stewards v. Red River Coal Co., Inc.* is available at <http://src.bna.com/bwl>.

