



West Virginia DEP Sued Over Coal Mine Bonding Program

On May 18, 2020, we reported on a “notice of intent to sue” letter sent to the West Virginia Department of Environmental Protection (WVDEP) on behalf of three environmental interest groups concerning West Virginia’s program for bonding of coal mining operations. As more fully explained in our May 18, 2020 article, available [here](#), those groups demanded that WVDEP formally notify the federal Office of Surface Mining (OSM) of three events that they claimed would significantly affect the financial condition of the bonding program: (1) the insolvency of coal mine permittee “ERP Environmental Fund” and the associated receivership proceeding commenced by WVDEP; (2) an alleged lack of sufficient funding in the bonding program to cover the reclamation and water treatment costs at ERP’s operations; and (3) the potential insolvency of other mining companies.

On July 8, 2020, WVDEP formally [notified](#) OSM of the ERP proceedings, but denied that the circumstances surrounding ERP significantly affect the WVDEP bonding program. The very next day, the three groups filed [suit](#) against WVDEP in the federal District Court for the Southern District of Virginia. The complaint acknowledges WVDEP’s July 8, 2020 letter addressing the ERP proceedings, but alleges that the letter improperly failed to formally notify OSM of two other events the groups claim significantly affect the bonding program: (1) the bankruptcy proceedings of two other coal operators and the purported threatened insolvency of a third operator; and (2) WVDEP’s alleged inability to complete the required reclamation work at ERP’s operations with available funds.

The complaint requests that the court declare that WVDEP has failed to administer its regulatory program in accordance with the federal Surface Mining Control and Reclamation Act, and further requests entry of an order commanding WVDEP to do so. The groups also request payment of their attorney fees and costs associated with the lawsuit.

WVDEP’s response to the complaint will be due 21 days after the agency is formally served.

Should you have questions about the WVDEP coal mine regulatory program or other environmental permitting matters, please contact Robert M. Stonestreet at (681) 265-1364 or rstonestreet@babstcalland.com, or Christopher B. “Kip” Power at (681) 265-1362 or cpower@babstcalland.com.

JULY 14, 2020

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