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WLF Asks High Court To Reject EPA's Brazen Effort To Rewrite Federal Law

(Mingo Logan Coal Co. v. EPA)

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– Cory Andrews, Senior Litigation Counsel

WASHINGTON, DC—The Washington Legal Foundation today filed an *amicus* brief asking the U.S. Supreme Court to review, and ultimately reject, the Environmental Protection Agency's claimed legal basis for revoking a Clean Water Act discharge permit years after it was issued, putting billions of dollars' worth of investment at risk.

The case arises from a discharge permit the U.S. Army Corps of Engineers issued under Section 404 of the CWA to Mingo Logan Coal Company. Years after the permit issued, EPA sought to revoke the permit—even though the CWA expressly gives the Corps the sole authority to issue and revoke such permits (and the Corps declined to do so). Nevertheless, the U.S. Court of Appeals for the District of Columbia reversed the district court and held that the CWA grants EPA broad veto power extending well beyond the time of permit issuance.

In its brief, WLF argues that allowing regulatory agencies to adopt new, expansive interpretations of statutes, without the protections of notice-and-comment rulemaking under the Administrative Procedure Act (APA), significantly undercuts the interests of predictability and finality—two chief goals of administrative law. As WLF explained, if administrative agencies such as EPA behave as though the APA's rulemaking procedures are too cumbersome or inconvenient to follow, and are instead allowed to disrupt stakeholders' settled expectations under the pretense of reinterpreting existing law, then an important safeguard for our representative system of government will be lost, and the rule of law will be undermined.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews:

“This case seeks to reverse a brazen, unprecedented power grab by the EPA. If the decision below is allowed to stand, it will devastate permit holders not only in the coal industry, but in virtually every regulated industry throughout the country.”

WLF is a public interest law and policy center with supporters in all 50 States. WLF regularly litigates in environmental matters to promote adherence to the law and a rational balance between environmental protection and economic growth.

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