

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL COALITION,  
COAL RIVER MOUNTAIN WATCH, and NATURAL  
RESOURCES DEFENSE COUNCIL,**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO. 3:03-2281**

**COLONEL DANA R. HURST, District  
Engineer, U.S. Army Corps of Engineers,  
Huntington District and LIEUTENANT GENERAL  
CARL A STROCK, Chief of Engineers and  
Commander of the U.S. Army Corps of Engineers,**

**Defendants.**

**MOTION TO WITHDRAW MOTION FOR PRELIMINARY INJUNCTION AND TO  
CANCEL HEARING**

Plaintiffs hereby move to withdraw their Motion for a Preliminary Injunction challenging the United States Army Corps of Engineers authorization of fill activities for Apogee Coal Company's North Rum Mine pursuant to Nationwide Permit 21. Plaintiffs withdraw their motion based on a site visit by members of their organizations. Unfortunately, that site visit revealed that Apogee had already destroyed the streams that Plaintiffs sought to protect.

This action was brought to challenge the Army Corps of Engineers' continued authorization of illegal surface mining activities in central Appalachia pursuant to Nationwide Permit 21. The Corps' permitting activities are responsible for the large scale and permanent destruction of much of our region. Remarkably, when the Corps authorizes mines under the Nationwide permitting system, as it did here, it does not inform the public of the authorizations. In fact, the Corps, which systematically hides its permitting activities from citizens for as long as it can, has repeatedly refused to provide citizens notice of its activities at the time those activities

occur. The Corps' refusal to provide notice of its permitting activities at the same time that it provides such notice to coal operators shows the depth of the Corps contempt for the public that it is supposed to serve. If the Corps had provided timely notice of the authorization of Apogee's activities, Plaintiffs would have had the opportunity to seek to prevent the illegal destruction of the streams on the site.

Further, it is troubling that the Corps is again authorizing huge and extremely destructive mining operations pursuant to the Nationwide Permit. Plaintiffs had hoped that the Corps had abandoned its illegal use of that Permit in favor of individual permits. As the Court knows, the nationwide permit may not legally be used for activities that will have more than minimal impact on the environment. It is hard to imagine activities that have more extreme impacts on the environment than the kinds of mines at issue in this action. Remarkably, it now appears that the Corps has reversed its use of individual permits in an attempt to collude with coal operators to thwart the ability of citizens to enforce the law and to circumvent its obligations under the individual permitting system.

Plaintiffs sought the preliminary injunction because they were unable to discover from the Army Corps what was happening on the ground at the North Rum mine. If not for the secrecy of the Corps, it would not have been necessary for Plaintiffs to seek the preliminary injunction in the first place. Because Plaintiffs were not able to discover the authorization of the mining operation until several weeks after the Corps' approval, they did not know that the mining company had already destroyed all of the streams on the site. To compound the uncertainty, the West Virginia Department of Environmental Protection misinformed Plaintiffs by telling them that no stream filling had begun on the mine.

Plaintiffs' recent site visit verified that all of the streams on the proposed mine site were destroyed by the mining company during the short period between the issuance of the Corps' authorization and the time Plaintiffs discovered that authorization. The Corps' secrecy allowed Apogee (as it allows other coal operators) a window of time to rush to fill the streams to thwart Plaintiffs' attempt to enforce the law. Because of North Rum's swift destruction of the streams, there is no longer any reason to proceed with a preliminary injunction hearing on this mine. The Corps' secrecy and lax permitting oversight has already resulted in the destruction of the streams that the Clean Water Act charges the Corps with protecting.

Accordingly, Plaintiffs move to withdraw their Motion and to cancel the hearing on that Motion scheduled for May 31, 2007.

Respectfully submitted,

**/s/ Joseph M. Lovett**

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## CERTIFICATE OF SERVICE

I certify that on May 24, 2007, I electronically filed the foregoing Plaintiffs' Motion to Withdraw Motion for Preliminary Injunction and to Cancel Hearing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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**/s/ Joseph M. Lovett**

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