

Press Release from the Southern Environmental Law Center and Black Warrior Riverkeeper
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Groups Challenge Flawed Coal Mine Permitting along Black Warrior River

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Birmingham, AL – The continued use of a controversial permit in the Black Warrior River watershed by the U.S. Army Corps of Engineers fails to comply with federal requirements for surface mining, according to a lawsuit filed today by the Southern Environmental Law Center and Public Justice on behalf of Black Warrior Riverkeeper and Defenders of Wildlife.

The lawsuit challenges the Corps' use of a general permit known as Nationwide Permit 21 in Alabama, which has already authorized the fill and burial of hundreds of miles of streams and wetlands to accommodate surface mining, without the detailed study and analysis of cumulative impacts required by the Clean Water Act and the National Environmental Policy Act. In two prior lawsuits brought by Public Justice against the Corps in Kentucky and West Virginia, two federal courts have already declared NWP 21 to be in violation of these laws.

The Corps suspended the use of this permit elsewhere in the Appalachian region in 2010 because of mounting concern over its adverse effects on aquatic resources. Although the Corps substantially revised the permit when reissuing it in 2012, the Corps also included an arbitrary "grandfather" provision that allows the unlimited fill of streams and wetlands authorized by the previous version of the permit to continue in Alabama until 2017. Originally estimating that the "grandfather" would be used rarely, the Corps has approved around 80 total projects across the country under its auspices -- including 41 projects in the Black Warrior watershed alone.

"These 41 grandfathered permits should never have been granted, because they rely on the Corps' unsupported and undocumented assumption that burying and disturbing tens of miles of streams has only minimal cumulative effects," said Jim Hecker, Environmental Enforcement Director at Public Justice.

Since May of 2012, the use of this deeply flawed permit has authorized the fill of over 145,000 linear feet of streams (or approximately 27 miles) in the Black Warrior basin. The Black Warrior River watershed is a major source of drinking water for Birmingham, Tuscaloosa, and other Alabama communities.

"The Corps of Engineers is depriving Alabama of protections it affords other states, allowing miles of precious streams along the Black Warrior River to be destroyed by coal mines," said Nelson Brooke, Black Warrior Riverkeeper. "The Corps should be barred immediately from using

Nationwide Permit 21 in Alabama, home to the United States' largest number of aquatic species and the tail end of the Appalachian Mountains.”

This lawsuit asks the Corps to revise the permitting process to adequately consider the site-specific and cumulative environmental impacts of new stream-filling by coal mining. Activities that have more than minimal effects, either individually or cumulatively, such as significant stream-filling by coal mining, require individual permits under the Clean Water Act that can only be issued after careful review and public comment, a process the Corps has avoided under Nationwide Permit 21.

“It’s the responsibility of the U.S. Army Corps of Engineers to ensure that surface mining in Alabama strictly follows the permitting process required by law,” said Catherine Wannamaker, attorney with the Southern Environmental Law Center. “It is possible to balance protections for clean water and natural resources with economic opportunities, but this process has failed to do so.”

The Black Warrior River watershed is the largest coal producing region in Alabama, with more than 90 active coal mines. Much of the area has been degraded by surface coal mining, which has allowed significant loss of headwater tributary stream function, damage to wetlands with essential water filtration capabilities, and elevated pollutants in mine runoff such as sediment and heavy metals.

“Alabama’s freshwater streams host one of the greatest bounties of biodiversity in the world, yet the Corps has turned a blind eye to the impacts of multiple coal mining projects polluting and destroying stream habitats,” said Jane Davenport, senior staff attorney at Defenders of Wildlife. “The rare species pushed to the brink of extinction by coal mining are the canaries warning us that our irreplaceable rivers and streams must be protected from further damage if we are to protect human health as well.”

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About the Southern Environmental Law Center:

The Southern Environmental Law Center is a regional nonprofit using the power of the law to protect the health and environment of the Southeast (Virginia, Tennessee, North and South Carolina, Georgia, and Alabama). Founded in 1986, SELC's team of nearly 60 legal and policy experts represent more than 200 partner groups on issues of climate change and energy, air and water quality, forests, the coast and wetlands, transportation, and land use. www.SouthernEnvironment.org

About Black Warrior Riverkeeper:

Black Warrior Riverkeeper’s mission is to protect and restore the Black Warrior River and its tributaries. We are a citizen-based nonprofit organization advocating for clean water, wildlife habitat, and recreational opportunities throughout the Black Warrior River watershed. To learn more about the river and threats to it, visit www.BlackWarriorRiver.org

About Defenders of Wildlife:

Defenders of Wildlife is dedicated to the protection of all native animals and plants in their natural communities. With more than 1 million members and activists, Defenders of Wildlife is a leading advocate for innovative solutions to safeguard our wildlife heritage for generations to come. For more information, visit www.defenders.org

About Public Justice:

Public Justice is a national public interest law firm dedicated to using creative litigation to advance the public good, protect consumers, employees, civil rights and the environment. For more information, visit www.publicjustice.net