

Illinois Appellate Court Allows Claims Alleging that Coal Mine Waste Contaminated Community Drinking Water Supply

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The Appellate Court of Illinois, Fifth District, recently issued an opinion in *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A., Case No. 05-09-0207*, which concerned a coal mine owned by Monterey Coal (a division of ExxonMobil Coal U.S.A.) and located near Albers, Illinois. From 1977 until August 1996, when the mine closed, a coal preparation plant and two coal refuse and slurry disposal areas operated on the property.

The plaintiff-citizens' organization filed a lawsuit seeking to obtain injunctive relief to cause ExxonMobil to remove and properly dispose of slurried coal production waste, which was allegedly leaching into the community drinking water supply known as the Pearl Sand Aquifer. Plaintiff brought its claims under the Surface Coal Mining Land Conservation and Reclamation Act and the Water Use Act of 1983. The trial court granted the defendants' motion to dismiss the plaintiff's complaint, and this appeal followed.

The Appellate Court reversed the trial court's decision. The Appellate Court held that, because Plaintiff challenged ExxonMobil's compliance with its permits and did not challenge the actual issuance of permits, Plaintiff was allowed to bring an action under the Surface Coal Mining Land Conservation and Reclamation Act.

The Court also held that Plaintiff could bring an enforcement action under the Water Use Act, which requires that groundwater withdrawal must be done following the "reasonable use" rule, which is defined as "the use of water to meet natural wants and a fair share of artificial wants. It does not include water used wastefully or maliciously." According to the complaint, ExxonMobil is withdrawing four million gallons of water per week from the Pearl Sand Aquifer in order to keep contaminated groundwater within the boundaries of the permit.

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