

D.C. Circuit Rules EPA Has After-the-Fact Veto Power Over Water Permits

In *Mingo Logan Coal Co. v. EPA*, the D.C. Circuit recently held that the EPA has statutory authority to veto a discharge permit issued by the U.S. Army Corps of Engineers under the Clean Water Act—even if EPA had previously approved the permit years before.

In 2007, with EPA's approval, Mingo Logan Coal Company received a Section 404 permit allowing it to discharge some fill material from a mine in West Virginia into several creeks. But two years later, the EPA asked the Corps to rescind or modify the permit. The Corps declined, finding that there were no grounds to suspend, revoke, or modify the permit. In response, the EPA—citing Section 404(c)—began an administrative process to cancel Mingo Logan's permit.

Mingo Logan sued, arguing that Section 404(c) did not give the EPA statutory authority to veto a permit after it was issued, only to stop the permit from being issued in the first place. The U.S. District Court for the District of Columbia agreed, and EPA appealed to the D.C. Circuit. The D.C. Circuit held that Congress had given the EPA authority to veto a Section 404 permit's "specification" of where discharge is permitted "whenever" the EPA chose to do so.

The opinion can be found [here](#).

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