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Coal Pile Drainage/Citizen Suit Enforcement: Court Approves Consent Decree Between Environmental Organizations and Alabama Mine Operator

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The Southern Environmental Law Center and two other environmental organizations issued an August 11th news release stating that a United States District Court Judge in Birmingham, Alabama, granted a request to approve a Consent Decree which requires Drummond Company ("DC") to undertake certain environmental actions at the Maxine Mine Site ("Site"). See Civil Action No. 2:16-CV-01443-AKK.

The other organizations include:

- Black Warrior Riverkeeper
- Public Justice

(collectively, "Black Warrior")

Black Warrior undertook a citizen suit action in 2016 pursuant to the Clean Water Act and Resource Conservation and Recovery Act against Drummond for allegedly discharging acid mine draining and other pollutants from the Site into the Black Warrior River's Locust Fork and its tributaries.

The United States District Court had in 2019 granted Black Warrior's motion for summary judgment on Clean Water Act claims predicated on the discharge of acid mine drainage from the refuse pile, ditches, channels, gullies, basins, and dams at the Site into the Locust Fork.

The Court subsequently relied upon the United States Court decision in *County Maui v. Hawai'i Wildlife Fund*, 140 S. Ct. 1462 (2020) to grant a renewed motion by Black Warrior for summary judgment on Clean Water Act claims predicated on groundwater discharges.

The parties informed the United States District Court that they had reached an agreement and were finalizing a proposed Consent Decree in combination with the United States Department of Justice.

The Consent Decree provides Drummond must:

- Remediate the Site to eliminate non-compliant discharges of acidic drainage which are stated to include:
 - Sediment
 - Metals such as iron, manganese, and aluminum
 - Other pollutants

- Comply with certain effluent limits by a specified date
- Comply with new limits even if a less stringent permit is issued by the state

The Consent Decree imposes penalties of \$1,750 per day if Drummond fails to meet the final compliance deadline and requires Drummond to set aside funds to maintain and operate treatment systems for at least 30 years.

The Consent Decree assesses \$2.65 million in litigation costs and \$1 million for a Supplemental Environmental Project to mitigate the effects of past pollution in the watershed.

A copy of the Consent Decree can be downloaded [here](#).