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## Lack of public process could cost miners their jobs in Clay

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CHARLESTON, W.Va. -- Nearly 500 workers at a Clay County coal-mining complex could lose their jobs early next year, after a federal judge ruled the Army Corps of Engineers did not allow the public to comment on a key part of the mine's water pollution permit.

CONSOL Energy announced Tuesday it had issued required layoff warning notices to 378 workers at Fola Coal Co. and another 104 at Little Eagle Coal Co. near Bickmore. Fola operates a mountaintop removal operation and Little Eagle Coal an underground mine at the complex near the Clay-Nicholas County line.

Layoffs could start Feb. 7 and take effect over a two-week period, though CONSOL is trying to work out some way to avoid the job losses, said company spokesman Joe Cerenzia.

Nicholas J. DeIuliis, CONSOL's chief operating officer, blamed the move on a "repeated assault from nuisance lawsuits and appeals of environmental regulations."

"It is CONSOL Energy's policy to operate our coal and gas assets safely and within the framework of the laws regulating our industry, but we oppose any efforts to use them to unnecessarily impede our ability to sustain our operations," DeIuliis said in a news release.

Two weeks ago, U.S. District Judge Robert C. Chambers ruled in favor of the Ohio Valley Environmental Coalition and other groups who challenged the corps' approval of a Clean Water Act permit for Fola's Ike Fork Surface Mine.

Citizen groups sought to block the permit. They argued the corps robbed them of their ability to provide meaningful comments by not making key permit documents public during the permit review process.

At issue was Fola's "mitigation plan," outlining steps -- such as building man-made streams -- the company planned to take to compensate for burying natural waterways with mining waste.

Chambers ruled that such documents are key parts of the permit review process. Corps officials and the industry use mitigation plans to offset environmental damage and allow the corps to argue effects of mining are not significant enough to warrant further study or permit denial.

In the case of Fola, the company submitted a permit application in October 2004. A few weeks later, the corps asked the company for more information, including a copy of its mitigation plan.

But the corps went ahead with a public notice, and accepted comments on the permit in April and May 2005, without first having a copy of Fola's mitigation plan. Fola did not submit an initial mitigation plan until October 2006 and a final one until December 2007. Neither was put out for public comment, and the mitigation plan wasn't made available to the public until after the permit was issued in March 2008.

Environmentalists and many scientists believe coal company mitigation efforts have not been shown to work, and don't properly compensate for the ecological damage from burying miles of headwater streams. But without being able to review mitigation plans before permits are issued, citizen groups can't offer specific comments on those plans.

"What the corps was doing was hiding the ball by not letting us look at this information," said Jim Hecker, a Public Justice lawyer who represented citizen groups in the Fola case. "The litigation was about the fundamental unfairness of the corps forcing us to comment on specific aspects of the permit without having the information we needed to comment."

CONSOL's layoff announcement drew harsh words from Rep. Shelley Moore Capito, R-W.Va., who called it a "sobering reminder that continued uncertainty surrounding mine permits poses a serious threat to jobs across our state."

"This mine provides the vast majority of Clay County's tax base and is its largest employer, making the prospect of Fola shutting down troubling at best and economically devastating at worst," Capito said in a news release.

Steve Roberts, president of the West Virginia Chamber of Commerce, said in a statement that the layoffs were proof that the "war on coal/domestic energy" being waged by the Obama administration is "hitting home in West Virginia."

But Hecker noted that Chambers had suspended his Nov. 24 ruling for 60 days to give the company and the corps time to appeal or "seek other desired relief."

Cerenzia, the CONSOL spokesman, said the company is considering an appeal and talking to the corps about what other steps could be taken to remedy the problem.

"We are looking at that, and are waiting to hear what the corps is going to do," Cerenzia said.

"We're studying our options."

In his 55-page ruling, Chambers said the procedural flaws with the Fola permit "did not stem from any wrongdoing" on the company's part. The judge concluded that the entire issue could have been avoided if the corps had simply issued a supplemental public notice to allow citizens to comment on the mitigation plan.

"Such notice would have apprised plaintiffs and the public in general of the truly significant issues raised," the judge wrote, "thereby providing the public an opportunity to comment intelligently thereon."

"Consequently, such supplemental notice would have conserved judicial and other government resources, meanwhile preventing the expenditure of time, money and stress on the part of the plaintiffs as well as both mining companies."

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