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Ruling requires DEP to improve mine treatment

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CHARLESTON, W.Va. -- State officials must improve treatment of acid mine drainage from abandoned coal mines across West Virginia so that discharges comply with water pollution limits, under a federal court ruling issued this week.

The ruling by U.S. District Judge Irene M. Keeley could force the Manchin administration and lawmakers to increase coal taxes to fund millions of dollars of pollution reductions.

Department of Environmental Protection officials have never tried to estimate what it would cost to meet pollution limits at dozens of abandoned sites the agency controls.

"The state needs to reassess the treatment costs," said Jim Hecker, an attorney with Public Justice, which represented citizen groups that brought the case. "This could blow a huge hole in the reclamation fund."

DEP Secretary Randy Huffman learned of Keeley's ruling from a newspaper reporter, and said his agency would likely appeal the decision.

Keeley issued her ruling late Wednesday in a case brought by the West Virginia Highlands Conservancy and the West Virginia Rivers Coalition.

In a 35-page opinion, Keeley concluded that DEP is violating the Clean Water Act by not writing pollution permits with discharge limits at 18 abandoned sites in north-central West Virginia. A similar lawsuit, concerning three abandoned mine sites in the state's southern coalfields, is pending before U.S. District Judge John T. Copenhaver in Charleston.

The lawsuits focus on long-standing problems with West Virginia's Special Reclamation Fund.

The program, required by federal law, aims to clean up coal mines abandoned since passage of the 1977 Surface Mining Control and Reclamation Act. Mines abandoned before then are covered by a separate program, also mandated by the 1977 law and funded by coal industry taxes.

Over the years, the program has never had enough money. Thousands of acres of abandoned mines have sat unreclaimed. Hundreds of polluted streams went untreated.

Historically, the fund has been short of money because coal operators had not posted reclamation bonds sufficient to cover the true cost of mine cleanups at sites they abandon. A state tax on coal production was never set high enough to cover the difference.

Today, DEP operates treatment systems at dozens of abandoned mine sites. But the agency does not reduce the pollution from those sites enough to meet water quality limits, and does not obtain Clean Water Act permits for the site discharges.

Keeley ordered DEP to apply for and obtain permits for the 18 sites cited in the citizen lawsuit.

The judge did not set a six-month time limit for DEP to do so, as the citizen groups had requested. Keeley set a status conference for this morning to discuss further issues in the case.

Already, an advisory panel that monitors the reclamation fund has urged lawmakers to increase the coal tax that supports the fund from 14.4 cents per ton to 20.4 cents per ton.

Bill Raney, a coal industry representative on that panel, was the only member to vote against the recommendation. Raney could not be reached for comment Thursday.

Joe Lovett, director of the Appalachian Center for the Economy and Environment and another lawyer for the citizen groups, said: "The DEP has been trying to help the coal industry by keeping the tax artificially low, and what Judge Keeley has done is say the state has to stop protecting the coal industry."