



“The purpose of the Environmental Enforcement Project is to use citizen suits to enforce federal environmental laws when state and federal governments fail to do so.”

Jim Hecker, longtime Director, now Senior Attorney for the Environmental Enforcement Project

Jim Hecker: I’m Jim Hecker. I’m the Environmental Enforcement Director. I’ve been in that position since October 1990.

I have a separate niche within the organization that focuses solely on citizen suits under environmental laws, whereas the rest of the organization does a wide range of other activities.

I can tell you how my position has changed and it’s changed primarily in the different types of statutes that I’ve enforced over the years, and also because of the inventiveness of corporate counsel and the resistance of state and federal governments to what we try to do. It’s a constantly changing mix of regulatory requirements that I have to find new theories to challenge because they constantly undermine the legal theories that I’ve been winning in the courts. That’s the primary dynamic in my part of public justice.

The purpose of the Environmental Enforcement Project is to use citizen suits to enforce federal environmental laws when state and federal governments fail to do so. They're based on the premise that federal agencies and state agencies are often captured by the very industries they are supposed to regulate. That's been a consistent experience that I've had over the last 40 years that I've been in environmental law.

By far the most important case I've taken is to challenge the mountaintop mining coal industry in Appalachia. When I first started in 1998, there had been almost no enforcement against the coal companies for a systemic pattern of non-compliance with federal law. We brought the first federal citizen suit against a Appalachian coal mine [Bragg v. Robertson ruling 1999]. It was the largest ever proposed in the state and we won the first preliminary injunction against that mine. It was start of a 20-year odyssey that I've continued to this day, trying to chip away at coal companies that flout the law.

It's a programmatic effort to try to force the companies to internalize the costs of their operations. What's happened is that by non-compliance with the law, they pass those costs off to the public and to the environment. What we're trying to do is make them incorporate the full costs so that the true cost of fossil fuel generation in this country is internalized into the capitalist structure. The way it is now, there are heavy subsidies.

Robert Kennedy Jr. gave a lot of speeches on this a while back. What he said is, "You show me a fossil fuel company and I'll show you a federal subsidy," because they can't make it on their own. They're not economically viable. What they've done is pass huge costs off onto the public. The focus of our citizens' lawsuits is to make them pay the true costs. We've had a succession of theories we've used to chip away at those companies.

We first started by trying to enforce what was called a Buffer Zone Rule, which said that you couldn't dump coal into streams. You had to preserve a buffer zone because those are highly sensitive and ecologically valuable areas. We won that case. We got the court to enforce the rule, and that it was promptly eviscerated so that it no longer applied to valley fills.

Then we went and sued the US Army Corps of Engineers which had a fill rule which said you couldn't dump waste material in streams for the purpose of waste disposal. We won that decision in the district court. Again, the federal government changed the rule to exempt valley fills and allow the coal companies to continue dumping in the streams.

Then we forced the federal government to prepare the first environmental impact statement on coal mining in Appalachia. They'd never done one before, even though, at that time, hundreds of square miles of Appalachia and mountains had been leveled. They prepared environmental impact statement. What it showed was the two most serious impacts were selenium pollution, which is a toxic metal, and high dissolved solids in the streams, which are in the form of conductivity. What that does is it makes

the bugs in the stream unable to live there. And the bugs are sort of the foundation of the stream ecosystem.

Then we started a whole program to have those limits put in permits and to enforce compliance. We were successful on both fronts, especially on selenium. But with conductivity, again, the requirement that we were using was removed by the state government.

So we've had three of the four main theories that we have, have been retracted by the governments in response to our litigation. It shows that even if you have a good legal theory and you're enforcing a statute the way it's supposed to be enforced, you're up against a lot of industry and government pressure to backtrack to the benefit of those companies.

There's one other aspect of this which is really important. It was a separate set of cases, and that is to require the companies to pay the full cost to reclaim the land after they leave the site. To do that they have to put up a bond and the bonds have always been inadequate. When we started, the bond for removing a ton of coal was based on 3 cents per ton. If you imagine, that's 3 cents, at the time ton of coal could get about \$60, so it was a pittance. And as a result of our case, they upped it to 27 cents, which was still inadequate.

So we continued to sue but we lost when the federal government allowed the state to set up a procedural mechanism with an advisory council that was supposed to review the adequacy of the fund and make recommendations on how to improve it. We challenged that and said, "Look, it's not going to work because you haven't accounted for the fact that some of these mining companies are very big. And if they go bankrupt, if they go belly up, it's going to sink the whole system."

We waited about 15 years, and our prediction came true. In 2018, one of those companies did go belly up -- a hundred permits -- the company dismissed all its employees, walked off the site and said to the state, "It's all yours. You clean it up."

That was such a shock to the bonding system that the state filed a lawsuit to take the whole company over in receivership and said it couldn't use the bonding system. If they tried to, it would overwhelm and bankrupt the entire bonding system. At that point, we said, "Well, the state is still trying to avoid responsibility. It should use the bonds it has and at least try to fix things." So we sued the state and forced them to notify the government that their entire mining program, the bonding program, violated federal law.

The state refused to do so. We sued them in court. We won and we forced the notification to OSM, the federal agency [the Office of Surface Mining Reclamation and Enforcement]. And then, of course, OSM wouldn't do anything. So we sued OSM and this year we finally got a judgement. We finally got OSM to agree that the state had to correct its bonding system.

So that's been a 20-year effort to try to get the coal industry to pay the full cost of its compliance and cleanup obligations.

For 40 years, the Environmental Enforcement Project has used the citizen lawsuit provisions of federal environmental laws to force polluters to pay for the cost of their pollution. And in particular, to force the fossil fuel industry to internalize the costs of coal and its destructive impacts in Appalachia.

I did a lot with asbestos -- the demolition of buildings with asbestos. The EPA [Environmental Protection Agency] proposed to change the method of removing asbestos from buildings, from using people in moon suits and encapsulation and very strict control of the worksite to instead using a bulldozer and a fire hose to wet down the property, which would make it cheap and dirty and spread the asbestos to the neighbors. We were successful in fighting that and getting EPA to back down. It took several years and a lot of fighting, but eventually, we forced the inspector general to issue a report which heavily criticized EPA and they back down and abandoned that effort. That's one other thing I was proud of.

Of course, we've brought individual cases here and there.

One of the consequences of filing these lawsuits is we've been able to have settlements which devote the penalty payments to environmental projects to clean up the environment.

With mountaintop mining, we've gotten over \$20 million devoted to restoring watersheds in West Virginia that have been damaged by mining practices. There's now a separate company which has been set up and it's enlisted the help of world-class restoration experts to do model restoration programs in some of the most heavily impacted areas in West Virginia. That's also a benefit of those cases.

I love working for the little guy. I love working for the underdog, for the person that's being oppressed, I guess you would say. I have a lot of compassion for those people.

One of the things that I feel like I can do is use the law to give those people a voice in court and to bring justice to underserved areas. That's certainly the case in these parts of West Virginia, which have been devastated by mining. It's astounding, if you fly over these areas, how serious the impacts are. When we brought our case [Bragg v. Robertson], we asked the judge to take a helicopter tour. When you get to that part of the opinion -- when [Judge Haden] describes what he was seeing in the helicopter -- the entire tone of the opinion changed. It's just like his eyes were open and he said, "Oh my God, look at what we're doing to our environment."

I think getting people to have that recognition and exposing the underside of American business and how our businesses are powered -- how we use electricity. Most people don't really see what's happening with that.

I went on a tour of one of the largest coal-fired power plants in Ohio and it was like going into the belly of the beast. Seeing it was almost like entering a hellscape because you're surrounded by these massive machines thundering at you in this enormous amount of heat being generated by a massive boiler system.

That's when you can really feel what the engine of the economy is at the most visceral level.

I've always thought that citizen suits had the power to change the world. I'm more cynical now after doing this for 40 years -- that just chipping away at things. But I feel like I'm working on the right side and this is the only side I would want to work on.

I wish I could be optimistic. I entered the law in 1975 -- sort of the height of the public interest law movement. It's been a real struggle since then. Actually, it's hard to say that we're ahead of where we were 40 years ago, in terms of the strength of public interest law. There are more people doing public interest law now than there ever would have been. But the obstacles I feel like are getting greater and greater. We need to fight harder and harder to try to even maintain where we are, much less to succeed. I just don't know.

At this stage in my life, with the benefit of hindsight, I'm more pessimistic than optimistic. I think we're facing a grave danger. It's more important than ever to fight, but it's also -- the stakes have gotten much, much higher.

The biggest challenge obviously is climate change. The next one is habitat loss. I don't work on habitat loss because I don't do wildlife law, so I've had to focus on the pollution side of the equation. But I think those two are the biggest.

I'm very grateful to having been able to work at Public Justice. I think it's a wonderful organization. I've been given an enormous amount of responsibility but also an enormous amount of freedom to find the cases that I think are the most important and that can be the most successful. There are very few organizations that would've given me that opportunity. I think I've had a wonderful career. I think I couldn't have found a better place to work.