

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL MINING ASSOCIATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	No. 10-cv-01220-RBW
LISA JACKSON, in her official capacity as	)	
Administrator, U.S. Environmental Protection	)	
Agency, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65(a), and Rules 7 and 65.1 of this Court, Plaintiff National Mining Association (“NMA”) hereby moves for a preliminary injunction in this case. NMA requests that this Court set aside and enjoin implementation of the June 11, 2009 Enhanced Coordination Process (“EC Process”) memoranda,<sup>1</sup> issued by the U.S. Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers (“Corps”), and the April 1, 2010 Detailed Guidance Memorandum (“Guidance”),<sup>2</sup> issued by EPA. Without intervention from this Court, EPA and the Corps will continue to enforce and implement the EC Process memoranda and the Guidance in contravention of the clear mandates of the Administrative Procedure Act (“APA”), Clean Water Act, and the National Environmental Policy Act and will continue to cause irreparable harm to NMA and its coal-mining members.

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<sup>1</sup> The memoranda are available online at [http://www.epa.gov/owow/wetlands/pdf/Final\\_MTM\\_Permit\\_Coordination\\_Procedures\\_6-11-09.pdf](http://www.epa.gov/owow/wetlands/pdf/Final_MTM_Permit_Coordination_Procedures_6-11-09.pdf), and at [http://www.epa.gov/owow/wetlands/pdf/Final\\_EPA\\_MTM\\_letter\\_to\\_Army\\_6-11-09.pdf](http://www.epa.gov/owow/wetlands/pdf/Final_EPA_MTM_letter_to_Army_6-11-09.pdf).  
<sup>2</sup> The Guidance is also available online at [http://www.epa.gov/owow/wetlands/guidance/pdf/appalachian\\_mntntop\\_mining\\_detailed.pdf](http://www.epa.gov/owow/wetlands/guidance/pdf/appalachian_mntntop_mining_detailed.pdf); see also 75 Fed. Reg. 18500 (solicitation for public comment).

As described in the accompanying Memorandum in Support of Motion for Preliminary Injunction, NMA meets all the requirements for preliminary relief now. NMA is likely to succeed on the merits because the EC Process memoranda and Guidance are legislative rules that should have been issued in accordance with the APA and because the EC Process memoranda and Guidance also substantively violate the Clean Water Act and the National Environmental Policy Act. Next, as illustrated in the declarations filed with the Court, NMA's members will suffer irreparable harm if EPA and the Corps continue to implement the EC Process memoranda and Guidance. The severity of this harm tips the balance of equities in NMA's favor, and the public's interest in the integrity of the regulatory process, the domestic development of coal, the environmental benefits of re-mining, and the recovery of the economy are all served by a preliminary injunction here. Accordingly, for the reasons set forth in the accompanying Memorandum in Support of Motion for Preliminary Injunction, NMA respectfully moves this Court to grant a preliminary injunction and set aside and enjoin implementation EC Process memoranda and the April 1, 2010 Guidance during the pendency of this litigation.

Pursuant to Local Rule 7(m), NMA has conferred with counsel for federal Defendants at the U.S. Department of Justice ("DOJ") regarding NMA's motion. DOJ indicated that the Defendants oppose NMA's motion.

Lastly, pursuant to Local Rule 65.1(d), NMA requests oral argument on this motion because of the complex and significant legal arguments involved in this case.

Respectfully submitted,

/s/ Kirsten L. Nathanson

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Dated: September 17, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to Federal Rule of Civil Procedure 5(b)(2)(E), C.J. Morris of the U.S. Department of Justice has consented in writing to accept electronic service on behalf of the federal Defendants. In accordance with this consent, I have caused to be served, via electronic mail, Plaintiff's Motion For A Preliminary Injunction, the accompanying Memorandum in Support of Motion for Preliminary Injunction, all the Exhibits 1-23 and attachments thereto, the Declaration of Tony G. Mendoza, and the Proposed Order to the following e-mail address:

c.j.morris@usdoj.gov

          /s/ Kirsten L. Nathanson            
Kirsten L. Nathanson

Dated: September 17, 2010