

**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.	)	
	)	

**[PROPOSED] ORDER GRANTING  
MOTION FOR A PRELIMINARY INJUNCTION**

This matter is before the Court on the preliminary injunction motion of plaintiff National Mining Association (“NMA”). *See* Fed. R. Civ. P. 65. NMA seeks to enjoin the Defendants from implementing 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, and the April 1, 2010 Detailed Guidance Memorandum (“Guidance”),<sup>2</sup> issued by EPA. NMA contends that the Defendants’ promulgation and implementation of the EC Process memoranda and April 1, 2010 Guidance is contrary to the notice-and-comment requirements of the Administrative Procedure Act and the substantive requirements of the Clean Water Act and National Environmental Policy Act.

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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).

Having considered the parties' arguments, this Court hereby ORDERS that NMA's motion for a preliminary injunction is GRANTED. This Court's jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question) and 2201(a) (declaratory judgments); venue is proper under 28 U.S.C. § 1391(e) (a federal defendant resides in this district). This Court also finds that NMA has carried its burden of establishing (1) that it "is likely to succeed on the merits" in proving that the Defendants' promulgation and implementation of the EC Process memoranda and Guidance is contrary to the notice-and-comment requirements of the Administrative Procedure Act and the substantive requirements of the Clean Water Act and National Environmental Policy Act; (2) that NMA and its coal-mining members are now suffering and are likely to continue "to suffer irreparable harm" to their businesses "in the absence of preliminary relief"; (3) "that the balance of equities tips in [NMA's] favor"; and (4) "that an injunction is in the public interest." *See Mills v. District of Columbia*, 571 F.3d 1304, 1308 (D.C. Cir. 2009). NMA also has no adequate remedy at law.

It is therefore hereby ORDERED that the named defendants Lisa Jackson, Administrator of the EPA, the U.S. Environmental Protection Agency, John McHugh, Secretary of the Army, Lieutenant General Robert L. Van Antwerp, Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers, and the U.S. Army Corps of Engineers, along with the named defendants' officers, agents, servants, employees, and attorneys, or any other persons who are in active concert or participation with them, or have actual or implicit knowledge of this Order by personal service or otherwise, are hereby preliminarily enjoined from enforcing or implementing the EC Process memoranda and the April 1, 2010 Guidance against NMA, its coal-mining members, or other similarly situated coal-mining companies.

It is further ORDERED that the named defendants Lisa Jackson, Administrator of the EPA, the U.S. Environmental Protection Agency, John McHugh, Secretary of the Army, Lieutenant General Robert L. Van Antwerp, Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers, and the U.S. Army Corps of Engineers, along with the named defendants' officers, agents, servants, employees, and attorneys, or any other persons who are in active concert or participation with them, or have actual or implicit knowledge of this Order by personal service or otherwise, shall not take any other action inconsistent with this Court's Order.

SO ORDERED.

September \_\_, 2010

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United States District Judge