



Robert G. McLusky

Member

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Robert G. McLusky is a Member in Jackson Kelly's Environmental practice group, focusing on natural resources and environmental litigation. He practices out of the Firm's office in Charleston, West Virginia.

Bob has been practicing environmental law at Jackson Kelly for more than three decades, so there isn't much he hasn't seen. He has seen the genesis and evolution of some of the most complicated environmental regulations, giving him the type of experience that can only be learned through practice. Bob's practice focuses on energy development and infrastructure permitting and environmental litigation in West Virginia and surrounding states. He has represented manufacturing and energy ventures in a broad range of environmental issues, including defending Clean Water Act (CWA) enforcement actions in federal court for Fortune 500 companies.

Bob's love for his work and concern for his clients and cases extends to every minute of the day. In fact, he once was so eager to come to work, he accidentally showed up on a holiday and wondered where everyone was. This dedication has earned him numerous recognitions, including as the "Top Environmental Lawyer" in West Virginia in the 2011 edition of *Chambers USA*.

He has defended Clean Water Act "fill" permits from challenges under the National Environmental Policy Act (NEPA) and the CWA, advised "linear" energy projects on NEPA and Endangered Species Act (ESA) compliance, and defended NPDES, waste, mining, quarry, and air permits. His work has also included CERCLA cleanup actions, internal investigations of environmental compliance, environmental permitting strategies, and "Brownfields" projects to rehabilitate contaminated properties.

He has been listed in Woodward/White's *The Best Lawyers in America*® since 1993, Chambers and Partners in the Natural Resources and Environmental Law practice area, and West Virginia *Super Lawyers*. Bob is a frequent speaker and writer and is a past president of the Energy & Mineral Law Foundation.

At home on the West Virginia waters, Bob enjoys whitewater canoeing and paddle-boarding in his spare time.

Awards

- West Virginia *Super Lawyers*® for Environmental Law (2013-2021)
- *The Best Lawyers in America*® for Energy Law, Litigation - Environmental, Mining Law and Natural Resources Law (1993-2021)
- EMLF John L. McClaugherty Award (2015)
- U.S. News - Best Lawyers® Law Firm of the Year - in Mining Law (2015)
- Listed in the Construction, Real Estate & Environmental Section of *Super Lawyers*® Business Edition for Environmental (2013-2015)

- *Chambers USA, America's Leading Lawyers for Business* in the area of Natural Resources: Environmental Law in West Virginia (2007-2020)
- “Lawyer of the Year” for Mining Law – West Virginia’s Best Lawyers (2013)
- “Lawyer of the Year” for Litigation-Environmental – West Virginia’s Best Lawyers (2012)
- “Lawyer of the Year” for Energy Law – West Virginia’s Best Lawyers (2011)
- Rated by *Super Lawyers®* since 2007

Notable Legal Experience

Cases:

- *Sierra Club v. ICG Hazard, LLC*, No. 13-5086 (6th Cir. 2015) (affirming application of Clean Water Act “permit shield” to discharges of selenium in citizen suit)
- *Kentuckians for the Commonwealth, et al. v. U.S. Army Corps of Engineers and Leeco, Inc.*, No. 13-6153 (6th Cir. 2014) (affirming § 404 fill permit in face of CWA and NEPA challenge)
- *Ohio Valley Environmental Coalition v. Aracoma Coal Co.*, 556 F.3d 177 (4th Cir. 2009) (same)
- *Ohio Valley Environmental Coalition v. Bulen*, 429 F.3d 493 (4th Cir. 2005) (reversing district court decision invalidating a “general” § 404 permit issued by Corps of Engineers)
- *Kentuckians for the Commonwealth v. Rivenburgh*, 317 F.3d 425 (4th Cir. 2003) (reversing district court decision holding that excess spoil generated by mining industry is not “fill material” subject to § 404 of Clean Water Act)
- *West Virginia Coal Association v. Bragg*, 248 F.3d 275 (4th Cir. 2001) (holding state SMCRA authority not subject to federal court jurisdiction to enforce federally-approved state program)
- *U.S. v. Shaffer Equipment Co.*, 11 F.3d 450 (4th Cir. 1993) (affirming finding of misconduct by EPA in Superfund cost recovery action)
- *U.S. v. Consolidated Rail Corp.*, 729 F. Supp. 1461 (D. Del. 1990) (treated wood product supplier not responsible as an operator or generator under CERCLA for spilled coal tar at a processing facility even if it purchased entire output of processor)

Work History

- Jackson Kelly PLLC (1981-Present)

Practices

- Appellate
- Environmental
- Renewable Energy

Industries

- Coal
- Energy
- Manufacturing
- Oil & Gas

Education

- Washington and Lee University School of Law (J.D., 1981)
- Colgate University (B.A., 1977)

Admissions

- West Virginia (1981)
- U.S. District Court for the Southern District of West Virginia
- U.S. District Court for the Northern District of West Virginia
- U.S. District Court for the Western District of Kentucky
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Southern District of Illinois
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. Court of Appeals for the District of Columbia Circuit
- West Virginia Supreme Court of Appeals
- Supreme Court of the United States

Professional Organizations

- American Bar Association
- Energy & Mineral Law Foundation, Past President
 - Past president
- National Mining Association

Speaking Engagements & Publications

Speaking Engagements

- Speaker, "The Clean Water Act: What's Happening, What's Next, and Why Does It Matter To You? Part 2: Developments with Permitting Projects Under the CWA," ABA Webinar Series, Aug. 27, 2020
- Speaker, "Environmental Litigation Update," 47th Annual Mining Symposium and National Coal & Energy Conference, Charleston, West Virginia, Nov. 14, 2019
- Speaker, "Cooperative' Federalism and Energy Projects," American Law Institute Continuing Legal Education, Washington, D.C., May 3, 2019
- Speaker, "The Intersection of the Natural Gas Act and Environmental/Land Use Laws," 39th Annual Institute, Energy and Mineral Law Foundation, Nashville, Tennessee, June 19, 2018

Writings and Publications

- "The Intersection of the Natural Gas Act and Environmental/Land Use Laws," *39th Annual Energy & Mineral Law Institute*, Nashville (June 2018)
- "Conventional and Unconventional Warfare: The Increasing Criminalization of Both Clearly Wrong and Seemingly Ordinary Activities in the Mineral Industries," *36th Annual Energy & Mineral Law Institute* (March 2015)
- "Mayfly Mayday: The West Virginia Legislature Attempts to Redefine Compliance with the Narrative Water Quality Standards Through Senate Bill 562," *115 W.Va. L. Rev.* 1031 (2013)
- "Use of Conductivity to Define Compliance with State Narrative Water Quality Standards," Publication pending in *32nd Annual Energy & Mineral Law Institute*
- "Selenium Issues in the Coal Industry," *30th Annual Energy & Mineral Law Institute* (May 2009)
- "Civil Litigation under the Clean Water Act," *27th Annual Energy & Mineral Law Institute* (May 2007)
- "Valley Fills and the Clean Water Act: The Strange Confluence of the Clean Water Act and SMCRA in Bragg v. Robertson," *20th Annual Energy & Mineral Law Institute* (May 2000)
- "Recent Permitting and Enforcement Measures to Combat Acid Mine Drainage - Are They in Contravention of SMCRA?," *17th Annual Eastern Mineral Law Institute* (April 1996)
- "Citizens' Suits Under Selected Environmental Statutes," presented as part of the West Virginia University College of Law Continuing Legal Education Series (Feb. 1990)
- "West Virginia Regulation of Coal Mine Subsidence," Eastern Mineral Law Foundation Special Institute (Sept. 1989)

- “Surface Mining Permit Applicant Violator System,” presented to the West Virginia Mining and Reclamation Association (1989)