

**FILED**

**June 30, 2004**

released at 3:00 p.m.

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

McGraw, Justice, concurring:

I concur with the majority decision, but write separately to decry the fact that our Legislature has provided permit suspension or revocation as the only meaningful punishment in a case such as this. Suspension or revocation of a mining permit means that the mine owners will be punished a little while the coal miners will be harmed a lot. Unlike a substantial monetary fine, any action that stops the mining puts a greater burden on a Boone County coal miner than it does a stockholder in Richmond or Amsterdam.<sup>1</sup>

Not surprisingly, employees of the Department of Environmental Protection face great public pressure to keep the mines open and the miners at work. Until the Department of Environmental Protection has a greater ability to fine companies that break the law without directly harming the miner who is just doing his job, we will continue to have under-enforcement of the mining laws in West Virginia.

---

<sup>1</sup>A.T. Massey is the parent corporation of Marfork, and is based in Richmond, Virginia. A.T. Massey has at times been affiliated with Royal Dutch Shell of the Netherlands.