

THIRD QUARTER 2022
REPORT TO THE JOINT COMMITTEE ON GOVERNMENT AND FINANCE
PURSUANT TO WEST VIRGINIA CODE § 5B-2F-2(q)

On September 22, 2022, the United States District Court for the Northern District of West Virginia denied a motion to dismiss, concluding that the Plaintiffs are permitted to seek enforcement of a state agency decision or permit. *Potomac Riverkeeper, Inc., et al v. Virginia Elec. & Power Co.*, No. 2:21-CV-23, 2022 WL 4391433, (N.D. W. Va. Sept. 22, 2022). In the matter, Potomac Riverkeeper, Inc. and the Sierra Club alleged that Virginia Electric and Power Company (“VEPCO”) violated conditions of its National Pollutant Discharge Elimination System Permit (“NPDES Permit”) at the Mount Storm Power Station in Mount Storm, West Virginia because the water temperature near a tributary of the North Branch of the Potomac River exceeded the required temperature and was not measured on a weekly basis pursuant to the NPDES Permit. *Id.* VEPCO argued that Plaintiffs lack standing and sought dismissal of the matter. *Id.* In denying the dismissal, the Court noted that the West Virginia Department of Environmental Protection could have implemented an administrative penalty order if it wished to, which would have precluded this citizen suit. *Id.*