

Commerce Clause/401 Certification: Montana/Wyoming U.S. Supreme Court Bill of Complaint Alleging Washington State Discriminatory Denial



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The Attorney Generals for the states of Montana and Wyoming (collectively “Montana”) filed on January 21st three pleadings challenging Washington State’s denial of port access to ship Montana and Wyoming coal to foreign markets.

The pleadings filed included:

- Motion for Leave to File Bill of Complaint,
- Bill of Complaint
- Brief in Support of Motion for Leave to File Bill of Complaint

Montana alleges that Washington State violated the United States Constitution’s Commerce Clause when it denied with prejudice a Clean Water Act Section 401 Water Quality Certification for the Millennium Bulk Terminal in Cowlitz County, Washington. The terminal would handle coal for export to other countries.

The denial is alleged to be a discriminatory denial of port access based on the coastal states’ “economic protectionism, political machinations, and extra territorial environmental objectives.” The Commerce Clause is argued to prohibit coastal states from blocking landlocked states from accessing ports based on the previously referenced motives.

In support of its argument Montana alleges:

- Foreign markets desire cleaner burning coal from the Montana/Wyoming Powder River Basin
- Wyoming and Montana depend on taxes from coal production to fund critical state and local infrastructure and programs
- Fewer domestic markets for coal reserves exist
- Washington efforts to block port access impact federal energy and security policies
- Washington unilaterally blocked port access because of discriminatory favoritism of Washington products, political opposition and alleged extraterritorial environmental impacts

A copy of the pleadings can be downloaded [here](#).