

**Office of Surface Mining
Proposed Rule on Stream Buffer Zones
and Placement of Excess Spoil Material**

Issue: The Office of Surface Mining (OSM) has published a proposed rule to clarify the scope and application of its stream buffer zone (SBZ) regulations for surface and underground coal mines. The proposed clarification is necessary in order to put an end to the regulatory uncertainty and litigation spawned by opponents of coal mining and which impedes investment in the coal production that provides electricity to millions of homes, provides thousands of high-paying jobs, and is critical to our nation's economy. Ambiguity in the language of the current rule has been used as a pretext for challenging coal mining permits on the basis that the rule prohibits mining-related activities within or nearby streams. The courts have consistently held that both the language and the legislative history of the Surface Mining Control and Reclamation Act (SMCRA) clearly contemplate that such mining activities are allowed to occur in these areas, and OSM intends to clarify that principle in its regulations.

In addition to clarifying the SBZ regulations, OSM's proposal would create new regulatory requirements applicable to excess spoil placement. The rule proposes to require that excess spoil fills be designed and constructed to minimize any adverse effects on environmental resources. By these changes, the rule would afford more, not less, environmental protection regarding the impacts from mining operations, while at the same time providing the clarification necessary to end regulatory uncertainty and frivolous litigation.

Status: OSM is working now to develop a final rule.

Objections to the Rule are Unfounded:

Some seek to delay or prevent promulgation of a final rule clarifying the SBZ regulations by raising largely procedural concerns with the rulemaking and the manner in which it has been conducted. Such objections are nothing but a cloaked attack on a method of coal removal called mountaintop removal which occurs primarily in steep sloped areas of central Appalachia. Those objecting to the use of mountaintop removal technology now seek to prevent its use via opposition to the SBZ rule clarification. But the SBZ rule has a much broader application, relevant to all types of mining, both surface and underground, that occurs across the entire country. An attack on the SBZ rule is an attack on mining in general not just on mountaintop removal mining.

Arguments opposing promulgation of the rule are unfounded, ignoring years of public outreach and agency study. In fact, the SBZ rule is the product of a well informed and transparent public process. The proposed rule stems

from information derived from several environmental impact statements (EISs) focusing on regulation of mining under both the SMCRA and Clean Water Act regulatory programs, including a 5,000 page programmatic environmental impact statement (EIS), co-authored by EPA, the Fish & Wildlife Service, and the Army Corps of Engineers, on the impacts of mountaintop mining. The rule has also benefited from broad public participation spanning over five years and including four public meetings. A rule such as this, developed with complete transparency and public involvement should not now be derailed by those who wish to use it as a vehicle to stop mountaintop removal mining, a mining technology they disapprove of.

Conclusion:

Any effort to prevent promulgation or implementation of the SBZ rule would be inappropriate and should not be supported. Clarification of the SBZ rule is necessary to end the regulatory uncertainty and litigation that has plagued both regulators and the public for the past decade.