

## Revised Discussion Draft "APPALACHIAN RESTORATION ACT"

In March 2009, Senators Cardin (D-Md.) and Alexander (R-Tn.) introduced S. 696, the "Appalachian Restoration Act". S. 696 would amend Section 502 of the Federal Clean Water Act (CWA) to define "fill material" as any pollutant that has the effect of filling or raising the bottom elevation of a water body "for any purpose," but would exclude from the definition disposal of excess spoil material as described in Section 515(b)(22) of the Surface Mining Control and Reclamation Act (SMCRA). The legislation was intended to prohibit "mountaintop removal mining" in Central Appalachia by prohibiting the Corps of Engineers from issuing the Section 404 "fill" permits needed under the Clean Water Act (CWA) to construct excess spoil valley fills.

National Mining Association subsequently advised and the Congressional Research Service confirmed that the amendment would affect all surface coal mining and underground operations, because all forms of surface mining and some phases of underground mining generate excess spoil that must be placed in waters of the U.S. In response to these comments, the Senators asked EPA how to draft the amendment that would apply only to mountaintop removal coal mining with no effect on other coal mining operations.

Based on EPA's technical advice, the Senators provided alternative language that would exclude from the definition of "fill material" "mining overburden generated from mountaintop removal mining" and define mountaintop removal mining as "any surface mining that involves: the removal of an entire coal seam from outcrop to outcrop or seams running through the upper fraction of a mountain, ridge or hill by removing substantially all of the overburden off the mine bench."

The EPA recommended language could be interpreted to include all forms of surface mining, including any "point removal", or "area mining" (non-steep slope), along with traditional mountaintop removal mining. The language may also include deep mine portals.

The alternative language would: (1) redefine for CWA purposes what has traditionally been considered mountaintop removal mining under the Surface Mining Reclamation and Control Act (SMCRA); and (2) preclude placement of excess spoil in heads of hollows and valleys beyond the current jurisdiction of the CWA.

Whether mining in steep slopes of Appalachia or the level terrain of other coal basins of the country, Section 404 permits are integral to coal mining operations, both to insure water quality protection through the construction of fills, storage impoundments and sediment ponds, as well as the construction of roads and bridges, buildings and other facilities required to operate modern surface and underground mines. Without Section 404 permits, there would be no coal mining, surface or underground, no matter where that coal mine is located.