

## Op-Ed Commentaries

Charleston Gazette  
Gene Kitts  
December 16, 2008

THERE is no question that the Gazette is biased when it comes to covering coal mining issues, but the Dec. 4 editorial "Sabotage" was simply dishonest.

Alleging the stream buffer zone rule change is a "last-minute directive" that is "slipping through" in the final days of the Bush presidency is factually wrong, and the Gazette's own reporting provides proof. Several Ken Ward Jr. articles have referred to the nearly five-year process, the environmental impact statement that was performed and the public hearings about the proposed rule. Ward's Dec. 3 article states: "OSM proposed a rule in January 2004, and then delayed finalizing it so agency officials could conduct a more detailed environmental impact review." How can a process that generated over 40,000 public comments be characterized as "last-minute"?

Maybe the editorial writers don't read the Gazette. Or do they believe taking their so-called "facts" from press releases issued by anti-mining extremist groups is acceptable? The answer to these questions is obvious. The Gazette appears to be interested only in promoting an anti-mining agenda, not in accurately and honestly informing the public.

For those readers interested in history, the Clean Water Act was passed in 1972, the Surface Mining Control and Reclamation Act (SMCRA) followed in 1977, and the current buffer zone regulation was adopted in 1983. SMCRA does not mention a buffer zone but does specifically discuss and contemplate the handling of "springs, natural water courses or wet-weather seeps" inside "excess spoil disposal facilities" or fills.

To a reasonable person, this clause anticipated spoil disposal that covers a spring, which is often the beginning of a stream, or the stream itself. It's nonsensical to have a requirement to place excess material in a fill that may cover a stream while prohibiting mining activity, including building a fill, within 100 feet of that stream. Only in the twisted logic of mining's opponents and an overzealous federal judge did that argument ever gain traction. As proof, no regulatory agency since 1983 has applied the buffer zone rule to valley fills. It simply doesn't work and would actually block a primary accomplishment of SMCRA, which was stopping the environmentally destructive practice of "shoot-and-shove" mining. Instead of simply pushing material over the hill to form a "spoil bank," SMCRA required that highwalls had to be backfilled and all excess earthen material had to be placed in fills. Surely a person can't honestly believe that Congress intended the 1983 buffer zone rule to ban valley fills in favor of spoil banks, which would be a major step backward for everyone.

OSM's effort to clarify the stream buffer zone rule has been greeted with widespread criticism, most of it generated by anti-mining groups that unleashed a barrage of outrageous but untrue claims. Protections are not being "gutted" and this isn't an opening to "dump massive amounts of waste directly into streams." The buffer zone rule change will not make mining easier or permitting quicker; its impact will be on those extremist groups and their lawyers who are trying to stop the mining and use of coal. They will have lost one ambiguity that was exploited once for a short time before being overturned by the courts.

However, the rule change doesn't stop at clarifying the buffer zone but also introduces a new federal requirement that fills must be minimized both in number and size. A similar provision has been in effect in West Virginia since March 2000, so this "levels the playing field" with our neighboring states. For some reason, OSM's plan to require fewer and smaller valley fills hasn't drawn much attention from editorial writers. The Gazette readership would be far better served if those editorial writers would practice some old-fashioned journalism and gather real facts upon which to base their opinions.

Kitts is a senior vice president of ICG.