

A SCAM AND A SHAME

The Bush Administration's Draft Environmental Impact Statement (EIS) on Mountaintop Removal Mining and Valley Fills

Prepared by Kentuckians For The Commonwealth

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ACTION NEEDED

- Attend a public hearing on July 22nd from 2-5 pm and 7-11pm at the Hal Rogers Center in Hazard.
- Join other KFTC members at 6 pm in the parking lot to prepare for the evening session.
- Speak out. Declare your opposition to illegal and immoral mountaintop removal & valley fills.
- Take a stand for clean water, healthy communities, and a better future.
- Submit written comments by August 22 to KFTC at PO Box 1450, London, KY 40461 or jhardt@foothills.net. We'll send it, along with hundreds of others, in time for the August 29th deadline.
- *For more information, call KFTC at 606-632-0051 or 606-878-2161.*

BACKGROUND

In 1998, as part of a lawsuit settlement, the federal government agreed to create an environmental impact statement about mountaintop removal mining and valley fills (mtr/vf). The purpose of the report was:

“To evaluate options for improving agency programs under the Clean Water Act (CWA), Surface Mining Control and Reclamation Act (SMCRA) and Endangered Species Act (ESA) that will contribute to reducing the adverse environmental impacts of mountaintop removal operations and excess spoil valley fills in Appalachia.”

The report was supposed to be released in late 2000. The Bush administration has refused to release it for several years because it did not like the results of the government's own studies. Specifically, the studies demonstrated that mtr/vf have already caused extensive ecological harm, destroying almost seven percent of forests in the region and burying or damaging nearly 1,200 miles of headwater streams. The studies also indicated that placing tight restrictions on the use of valley fills would have a negligible impact on the economy.

A draft of the report was finally released in May and is now open for public comment. The bottom line: **The recommendations contained in the EIS report are a sham and a shame.** They will not protect our water or our stream and forest ecosystems. They will not protect our communities. In fact, they have no relation to the problems caused by mountaintop removal mining and valley fills whatsoever. Instead, the Bush administration has used the EIS process to develop a series of rule changes that will make it easier for coal companies to get permits for mountaintop removal mining.

The Bush administration ignored the scientific findings and made recommendations to “streamline” the permit process for coal companies and get rid of pesky rules and regulations that could be used to limit the use of mountaintop removal and valley fills. For example, the report identifies three possible alternatives that it claims would improve environmental protection. All three of these alternatives would do away with a 25-year-old rule that says mining impacts cannot come within 100 feet of streams.

THE EIS REPORT IN A NUTSHELL

The report documents extensive environmental damage caused by mtr/vf between 1985 and 2001.

- 724 miles of streams across the Central Appalachian region were buried by valley fills between 1985 and 2001 (many more miles have been permitted but not yet buried);
- an additional 1,200 miles of streams have already been impacted by valley fills;
- selenium was found only in those coalfield streams below valley fills (selenium is a metalloid that, according to the EPA, “can be highly toxic to aquatic life even at relatively low concentrations”);
- aquatic life forms downstream of valley fills are being harmed or killed;
- without additional restrictions, a total of 2,200 square miles of Appalachian forests (6.8 percent) would be eliminated by 2012 by large-scale mining operations (this is an area that would encompass Floyd, Knott, Leslie, Letcher, Perry and most of Harlan counties in eastern Kentucky; or Hopkins, Daviess, Union, Muhlenberg and Webster counties in western Kentucky);
- without additional environmental restrictions, mountaintop removal mining will destroy an additional 600 square miles of land and 1000 miles of streams in the next decade.

The report identifies three possible alternatives for “improving” the regulation of mtr/vf.

Alternative #1 – STATUS QUO

This alternative is the “do nothing new” approach. Under this system, the Army Corps of Engineers is responsible for reviewing and granting or denying permits for new valley fills in streams. Even under this option, the report recommends that the Office of Surface Mining do away with the “stream buffer zone” rule that prohibits mining activity within 100 feet of streams.

Alternative #2 – THE ADMINISTRATION’S PREFERRED OPTION

This alternative would create one permit application that coal companies would submit to the Army Corps of Engineers and the Office of Surface Mining. The two agencies would have a joint role in determining the size and location of valley fills. It would “clarify” the stream buffer zone rule by saying that it does not apply to valley fills.

Alternative #3 – GIVES THE LEAD ROLE TO THE OFFICE OF SURFACE MINING

This alternative would give the lead role in permitting valley fills to the Office of Surface Mining. The Army Corps of Engineers would step in only if they determined, after the surface mining agencies had granted a permit, that a more detailed assessment of the proposed valley fill was needed. It also would do away with the buffer zone rule.

The report is loaded with dangerous code words.

Under each of these alternatives, the report calls for “**harmonizing**” federal regulations used by the different agencies, and “**science-based methods**” for defining types of streams and describing types of damage to streams. These are code words with the power to do real damage.

Harmonizing refers to an all out effort by the Bush administration to do away with any regulations that could get in the way of continued, widespread use of mountaintop removal and valley fills. Regulations are “harmonized” when they are lowered to the lowest possible level within all agencies.

The call for “**science-based methods**” is a sinister way to make sure that coalfield residents and environmental supporters cannot strengthen regulations to prevent damage by the coal industry. For example, the report dismisses the idea of limiting the size of valley fills because there is not enough “science-based evidence” to prove that a certain size limit is best. According to this approach, every single valley fill should be treated as an isolated case, forcing coalfield residents to oppose each and every permit instead of restricting the practice all together.

The report rejects all proposals that would have restricted the use of valley fills.

The report mentions, and then immediately rejects, any proposals that would restrict the ability of the coal industry to bury Appalachian streams under valley fills. These proposals include:

- Restricting valley fills to certain types of streams.
- Restricting the size of allowable valley fills from more than 250 acres to just 35 acres.
- Setting an upper limit on the total number or percentage of streams allowed to be impacted.
- Labeling the streams in the region as “high value,” which would kick-in other parts of the Clean Water Act that could restrict the use of valley fills.
- Using the anti-degradation rules of the Clean Water Act to prohibit the use of valley fills.

The report dismisses most of these options because it claims there is not enough “science” to support them. It boldly rejects size limits on valley fills because the “economic study results were determined to have limitations and were not suited for establishing alternatives.” In truth, the government’s economic studies showed that even the strictest size limit would have a minimal economic impact on the economy and jobs.

The report recommends weakening existing laws and regulations that protect clean water.

As mentioned, the report calls for changing the “stream buffer zone” rule that has been in existence for 25-years. This rule, known as SMCRA regulation 30 CFR 816.57, says that no one can mine within 100 feet of intermittent and perennial streams. According to the Bush administration this rule is problematic, since it calls into question the use of valley fills and creates “confusion.” Besides, the administration argues, the Office of Surface Mining doesn’t enforce that rule anyway when dealing with valley fills, so why not just get rid of it? All three alternatives proposed within the EIS report recommend changing the buffer zone rule so that it does not apply to valley fills.

The report also supports a rule change proposed one year ago by the Bush administration which changed the definition of “fill” in order to allow the Corps of Engineers to give permits for valley fills under the Clean Water Act.

The EIS report also calls for “science based methods for definition and delineation of stream characteristics and impacts.” This mouthful of words would, among other things, allow the Bush administration to define certain types of streams out of existence for the purposes of regulation. If a stream isn’t really a stream, then who cares if you bury it?

SUMMARY

The draft Environmental Impact Statement on mountaintop removal and valley fills prepared by the Bush administration is a sham and a shame. The EIS report was originally requested by coalfield citizens and environmental supporters in order to identify ways to better protect our land, water and people. Indeed, the studies contained within this 5,000 page document show that the damage caused by mountaintop removal mining is more widespread and severe than previously known.

Yet the report has been hijacked by the coal industry and its cronies within the Bush administration. Its recommendations are focused on issues of “government efficiency” and the need to “provide a basis for more predictable business and mine planning decisions.” It ignores the real problems facing the region.

A public comment period will last until August 29, 2003. It is critical that Kentuckians speak now to demonstrate their opposition to mountaintop removal mining and valley fills and their determination to build a better future for the state and region.

KEY POINTS TO MAKE WHEN YOU SPEAK OR WRITE YOUR COMMENTS.

- I am opposed to mountaintop removal mining and valley fills. I believe that a common sense reading of the Clean Water Act and Surface Mining Laws not only allows but *requires* the government to prohibit the use of valley fills and mountaintop removal. These practices are immoral and illegal and should be stopped.
- I am angry that the report rejects – without meaningful consideration – specific restrictions on the use of valley fills. These restrictions could be based on size of valley fills, their cumulative impacts, the types of streams, or the high value of the aquatic resources in the region. There is plenty of science – and a strong legal case – for taking a position that leveling mountains and burying streams is wrong and must stop.
- I am opposed to any changes that would weaken the laws and regulations that protect clean water. In particular, I oppose the proposal to change the stream buffer zone rule that prohibits mining activity within 100 feet of streams. This rule should be strictly enforced for valley fills and in all other cases.
- I welcome the scientific studies that document the widespread and irreversible damage the coal industry is doing to our state and region. We’ve known and experienced these problems in Kentucky for too long. Mountaintop removal and valley fills bury and destroy important headwater streams, destroy biologically rich forest and stream ecosystems, damage drinking water sources used by millions of people, cause frequent and severe flooding, and wreck the quality of life in mountain communities.
- I do not support Alternatives #1, 2 or 3 contained within the EIS report. None of these options will protect our water. None of these options will protect our communities. None of these options will shape a better future for Kentucky or the region. They are a sham and a shame. They do nothing to address the real problems of our region. Rather, they will only make it easier for the coal industry to seek and obtain permits to continue with the total destruction of our land, water and people.
- This report is a shameful, dangerous gift from George Bush to the coal industry. It ignores the science and evidence about what mountaintop removal mining is doing to eastern Kentucky and the Appalachian region. It ignores the public’s demand for clean water, healthy environment and safe communities. It is a blueprint for the destruction, not the protection, of our homes and environment. The coal industry is crippling Kentucky, and the Bush administration is cheering them on.
- We can and must reclaim our government from the powerful corporate interests – especially the energy industry – who would sacrifice everything we hold dear to increase their gain. I urge all Kentuckians to get involved to stop mountaintop removal and valley fills. Together we can build a better future.
- Describe how you have been affected by mountaintop removal and valley fills. Describe the things that you value that are threatened by mountaintop removal mining. Describe why you believe mountaintop removal and valley fills should be banned.

Please take the time to write your comments down and submit them to KFTC by August 22nd. We will submit your letter, along with hundreds more, to the federal government in time for the August 29 deadline.

Send comments to: KFTC, PO Box 1450, London, KY 40743 or jhardt@kih.net or call 606-878-2161.