

HEARING BEFORE THE OFFICE OF SURFACE MINES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HELD ON: Tuesday, March 30, 2004

TIME: 6:00 o'clock p.m

LOCATION: BEST WESTERN PARKWAY CENTER
875 Greentree Road
Pittsburgh, PA 15220

MR. DAVID HARTOS, PRESIDING
Physical Scientist
U.S. Department of Interior
Office of Surface Mining
Three Parkway Center
Pittsburgh, PA 15220

REPORTED BY: LINDA M. FROST, Court Reporter

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 MR. HARTOS: Well, it's 6:00 o'clock, I
2 guess everybody is timely, and why don't we
3 start this hearing.

4 I want to welcome everyone. Good
5 evening. Welcome to the public hearing on
6 the Department of Interior's and Office of
7 Surface Mining's proposed rule on excess
8 spoil, and the stream buffer zone rule, and I
9 want to thank you all for coming tonight. My
10 name is David Hartos, I'm a physical
11 scientist, I work with OSM, I work out of the
12 Pittsburgh office, and I'm going to be the
13 presiding officer tonight. I'm going to read
14 just a short script, okay, to open up this
15 hearing.

16 The purpose of today's -- tonight's
17 hearing is to hear your views regarding our
18 agency's proposal to amend the Federal
19 Surface Mining regulations regarding excess
20 spoil in a stream buffer zone. The proposed
21 regulations changes were announced in the
22 Federal Register on January 7, 2004, and the
23 summary in that notice states that we, the
24 Office of Surface Mining, are proposing to
25 amend our regulations to accomplish two basic

1 goals; to minimize the adverse effects from
2 the construction of excess spoil fills, and
3 to clarify the circumstances in which mining
4 activities, such as the construction of
5 excess spoil fills, may be allowed within the
6 stream buffer zone, that is within 100 feet
7 of an intermittent or perennial stream.

8 By these changes, proposed changes, we
9 intend to clarify our program requirements
10 and reduce the regulatory uncertainty
11 concerning these matters. These changes will
12 also reduce conflicts and improve consistency
13 between the regulations under the Surface
14 Mining Control and Reclamation Act, SMCRA,
15 and the regulation under the Clean Water Act.

16 More specifically, we intend to
17 minimize the environmental effects from
18 excess spoil fill construction by requiring
19 that the coal operator demonstrate, to the
20 satisfaction of the regulatory agency, to the
21 extent possible, that the volume of excess
22 spoil fill is minimized; two, that the excess
23 spoil fills associated with the mine are
24 designed to be no larger than needed to
25 accommodate the anticipated volume of excess

1 spoil from the mine; three, that alternative
2 configurations for excess spoil disposal,
3 including alternative sizes, numbers and
4 locations, are considered, and, four, the
5 proposed excess spoil disposal plan
6 minimizes, to the extent possible, adverse
7 impact to the prevailing hydrologic balance,
8 fish, wildlife and other related
9 environmental values.

10 We are also proposing to amend a
11 regulation commonly referred to as the stream
12 buffer zone rule to more closely align with
13 its bases in SMCRA in our experience in
14 implementing the rule.

15 The proposed changes to the stream
16 buffer zone rule will require the applicant
17 to demonstrate that mining operations has
18 been designed to the extent possible to
19 minimize impacts on hydrology, fish, wildlife
20 and related environmental values, and to
21 prevent additional contributions of sediment
22 to streams prior to allowing mining within
23 100 feet of a perennial or intermittent
24 stream.

25 We propose to revise the rule language

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 that is evidently confusing, that has given
2 rise to the divergent conflicting
3 interpretations, lead to litigation, and has
4 raised concern over the restrictions not
5 required by SMCRA, and that might conflict
6 with the regulations under the Clean Water
7 Act.

8 Finally, we propose to amend our stream
9 diversion regulations to comport with the
10 proposed changes to the stream buffer zone.

11 If you haven't done so, we strongly
12 encourage you to read the January 7th,
13 Federal Register notice, and where you signed
14 up tonight, we have some extra copies of the
15 notice. We also, if you have access to the
16 internet, you can view or download the
17 proposed rule by visiting our OSM's home
18 page, www.osmre.gov, and it's on one of these
19 signs up here.

20 Okay. In the January 7th notice, we
21 let you know how you could comment on the
22 rule and initially established a deadline of
23 March 8th for comments. Now, please note,
24 for this is important, at the request of
25 several commenters, on February 26th, we

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 extended the time period for public input by
2 an additional 30 days, and the deadline for
3 submitting comments is now April 7th, so next
4 week.

5 Now, there's several ways you can make
6 your views known regarding this proposal.
7 You can mail or hand carry a letter with your
8 comments to the Office of Surface Mining
9 Reclamation and Enforcement, The
10 Administrative Record, Room 101, 1951
11 Constitution Avenue, North West, Washington
12 D.C., 20420, and the address is up here on
13 this table, or you can email your comments to
14 OSM Rules at osmre.gov.

15 Finally, you can testify at tonight's
16 hearing, if you wish. This is one of five
17 hearings that are being held in the coal
18 field. Other hearings are being conducted in
19 Hazard, Kentucky; Charleston, West Virginia,
20 Harriman, Tennessee, and Washington, D.C.

21 If you haven't done so, please sign our
22 attendance sheet at the back -- or, on the
23 side of the room here during our first break,
24 and if you want to speak tonight, please fill
25 out a speaker card, it is just an index card,

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 and I will be calling you to speak in the
2 order in which we received your card.

3 Okay. At the front of the room is a
4 court reporter, who is present to prepare a
5 written record and transcribe the statements
6 made here tonight. Please don't be
7 intimidated by either the reporter or the
8 formal structure of the hearing. Remember
9 the purpose of this hearing is to obtain your
10 views on the proposed changes in the
11 regulations, so we can consider your comments
12 when we prepare the final action on the
13 regulatory changes.

14 We are here to listen to you, and we
15 will not debate the merits of the proposed
16 rule or answer any questions regarding the
17 substance of the proposal.

18 I ask you to limit your comments to the
19 proposal, and ask the audience to remain
20 quiet during testimony. Please be respectful
21 of others. We have scheduled the hearing for
22 three hours, and everyone who wants to speak
23 tonight will have an opportunity to do so.

24 So far, we have 14 -- make that 17
25 speakers signed up, so in order for us to

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 ensure that everyone has a chance to speak
2 tonight, I ask that you limit your testimony
3 to no more than ten minutes.

4 Okay. In order to keep us on time, we
5 will use color cards to let you know how much
6 time you have remaining, and when Dr. Kohli
7 at the front of the room holds up the yellow
8 card, it means you have a minute left; when
9 he shows you a red card, 15 seconds to
10 finish. I will call the name of the speaker,
11 and the speaker to follow.

12 Okay. When you come forward, as a
13 speaker, please use the microphone. The
14 speaker to follow, there's a chair there with
15 a folder that I reserved, you move the
16 folder, and you can sit there, and you will
17 be up next.

18 At the beginning of your testimony,
19 please state your name and your affiliation,
20 if you choose to provide one, and if you have
21 a copy of your written statement tonight, we
22 would appreciate if you would provide a
23 statement to the person at the sign-in table
24 after you're through. We will provide the
25 copy of that statement to the court reporter,

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 and it will make her job easier.

2 We will be taking a ten minute recess,
3 approximately at 7:45 tonight, and again,
4 thanks for coming.

5 Now, I am prepared to open the meeting,
6 so we can hear your comments on the proposed
7 rule, so let's call up Mary Wildfire to the
8 speaker, and the speaker to follow is Camille
9 Dzierski. So if you would take the seat next
10 to the -- you might want to move it even one
11 over, that would be fine.

12 MS. WILDFIRE: Hi. Thanks for the
13 opportunity to address you, my name is Mary
14 Wildfire, and I live on Decker's Creek, which
15 flows into the Monongahela River. I'm
16 incorporating herein by reference the 70,000
17 plus comments that were submitted opposing
18 mountain top removal, valley fills and the
19 environmental desecration caused by these
20 activities in response to the mountain top
21 removal EIS.

22 I want to emphasize to you this point:
23 Water is not negotiable. We all have to have
24 it. Water is like air. It should never be
25 treated as a commodity, nor should it become

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 a waste dump. Water is not negotiable.

2 I could discuss the details of the rule
3 change proposed, but we all know that it
4 comes down to this: The coal industry wants
5 standards relaxed so it can continue to break
6 the law without fear of legal action, and OSM
7 is eager to accommodate the industry. Yes,
8 there are new standards to replace the ones
9 removed. No increase in sedimentation
10 downstream and efforts made to protect fish
11 and wildlife to the extent possible, ha, ha,
12 ha. What does that mean? Well, we all know
13 what it means, don't we? It means that just
14 in case of any challenge, someone on the crew
15 will have to say "Oh, yeah, we protected the
16 fish and the other stupid critters to the
17 extent possible. Too bad more wasn't
18 possible, but after all, they're lower life
19 forms, and they don't vote." Just like now
20 they can put a "Dolphin Safe Tuna" label on
21 while fishing in the middle of pods of
22 dolphins, just as long as someone on the boat
23 certifies that he didn't see any dolphins
24 killed; in other words, the new rule means
25 nothing. It means open season on creeks that

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 happen to run above coal seams.

2 I ask that you forget about this
3 contorted attempt to clarify the law by
4 muddying perfectly clear language in order to
5 facilitate the muddying, or outright burial
6 of thousands of perfectly clear streams.
7 Fish and invertebrates and worms and craw
8 dads, and any number of nonvoting Appalachian
9 residents need those clear streams; birds and
10 foxes and humans need those fish and other
11 creatures, and our children and great-great
12 grandchildren will need to use these same
13 streams. God is not making any more.

14 We can't use these streams up and just
15 throw them away. Water is not negotiable.

16 Yes, men of OSM, I have an invitation
17 for you. April is the prettiest month in
18 Appalachia, get out of Washington DC or
19 Pittsburgh one day very soon, get out of
20 those uncomfortable suits, get out of your
21 car and go find one of these streams. Get
22 out of your hot shoes and put your feet in
23 the creek, and you'll realize what a creek is
24 and what it's worth. In fact, a creek's
25 worth is infinite.

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 Water is not negotiable. Thank you.

2 MR. HARTOS: Okay. Our next speaker
3 will be Camille Dzierski, and the speaker on
4 deck is Attilia Shumaker.

5 MS. DZIERSKI: Camille Dzierski, Ten
6 Mile Protection Network, Loan Pine,
7 Washington, Pennsylvania.

8 I have somewhat of a bibliography here
9 with me, and I want to -- in your opening,
10 two things that got my attention, a good
11 thing and a bad thing. The bad thing is
12 twice you mentioned "to the extent possible."
13 I have a problem with that. The good thing
14 is you're recognizing intermittent streams.
15 I have one. My attention will be on the
16 stream buffer zone rule. I have 43 acres,
17 for a reason. I keep it as a wildlife
18 habitat. I have livestock, and I went
19 through great expense to fence off my buffer
20 zone from my animals, and I -- I'm the
21 neighbor that can be seen in her pajamas with
22 her coffee and her dogs and her rubber boots
23 walking in the stream to see how it's faring
24 against this weather, and I don't think
25 anybody should have a right to impact that,

1 other than the natural turn of ecological and
2 environmental events.

3 I have a copy of SMCRA of 1977, and if
4 you go through the contents, a lot of it is
5 dated, and I think that's what needs to be
6 revised here. In particular, there are
7 provisions for financing R&D, but it's all
8 coal related. I think 30 years later, it
9 needs to be alternative fuel sources.

10 It's cumbersome, isn't it, the
11 collection of site specific resource
12 information and protection enhancement plans
13 for fish and wildlife habitats required by
14 the regulatory authority under this Act? I
15 mean, the language says -- all this stuff in
16 here that's covering the wildlife is going to
17 be changed by the proposed revisions; the
18 condition of the land to be covered by the
19 permit prior to and including, the uses
20 existing at the time of the application; the
21 steps to be taken to be complied with
22 applicable air and water and regulations, and
23 any applicable health and safety standards;
24 revegetation requirements, and it goes on and
25 on that this law was supposed to protect

1 habitat; restore the land affected to a
2 condition capable of supporting -- which it
3 was capable of supporting prior to any
4 mining, and I can go on and on and on, and I
5 won't.

6 "Iowa State, Stewards of Iowa State,
7 Stewards of Our Streams, Buffer Zone Design;
8 maintaining a forested or prairie buffer
9 along creeks, streams and river provides more
10 than just a beautiful landscape. The right
11 combination of trees, shrubs and native
12 grasses can improve water quality by removing
13 sediment and chemicals before they reach the
14 surface water. A properly cared for buffer
15 area can also moderate flooding, help
16 recharge underground water supplies, prevent
17 soil erosion and preserve wildlife habitat."

18 "Pond and Brook," put out by "Fish and
19 Boat," great book, talks about physical
20 alterations of fresh water environments,
21 eroded sediment storing the spring runoff can
22 bury and suffocate the eggs of trout and
23 other spawning fish. Silt can clog fish
24 gills causing an oxygen starved death. Where
25 are the PETA people? I mean, they're

1 everywhere. The increased turbidity of the
2 water decreased the sunlight penetration to
3 algae and other green plants, reducing the
4 productivity and resulting oxygen levels from
5 photosyntheses.

6 My little critters here -- I was going
7 to bring the crayfish, but they couldn't
8 survive in low oxygenated environment, so I
9 brought these, I think they're rose minnows,
10 so again, where are the PETA people, because
11 virtually, this is what's going to fill that
12 little tank. I don't care how many barriers
13 you put up, silt will fill and bury those
14 fish. If I don't allow my horse in the
15 creek, I certainly don't want mine waste.

16 I'm a graduate of the Governor's School
17 for Environment and Ecology. I have to teach
18 kids Pennsylvania standards on environment
19 and ecology. This proposed rule change flies
20 in the face of all these. It says here "To
21 preserve the quality of life, people
22 everywhere need access to basic resources,
23 such as clean air, clean water, healthy soil
24 and adequate minimal resources." I am
25 supposed to teach that, so they can live it.

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 "To ensure habitat for other species that
2 their actions could impact them negatively."
3 It only mentions logging. I'm not sure why
4 it doesn't mention mining.

5 I highlighted -- these are the
6 standards on environmental and ecology, if
7 anybody wants to look at them. We're
8 supposed to teach the effects of water on the
9 life of organisms, explain how water is
10 necessary for all life, explain physical
11 components, explain and describe
12 characteristics of the wetland, multiple
13 functions of wetland, and it goes on and on,
14 and I'm supposed to teach it, and you
15 deregulate mining to the point where
16 they -- why do I bother? "No child left
17 behind," says "The kids have to know this,"
18 and I have a hard time teaching it.

19 Please don't be blind to the impact on
20 ecology and the environment. If anything
21 needs to be revised, it's the whole Act of
22 1977. It's dated. There's no mention of
23 hydroelec -- or, what did Bush say before he
24 went into Iraq? "I'm going to allocate money
25 for hydrogen power R&D," I think that was it.

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 What about wind power, solar power? We're in
2 a new millennium. Let's move on. Coal is
3 old.

4 And I will submit my written testimony.
5 I've been busy, and I thank you for this
6 time, and please consider the ecological and
7 environmental impacts of these deregulations.
8 If I, as a private property owner, can
9 protect my buffer zone, I think a major
10 corporation should have to do the same.

11 Thank you.

12 MR. HARTOS: Attilia Shumaker will be
13 our next speaker, and David Bartsch will be
14 on deck.

15 MR. BARTSCH: Bartsch.

16 MR. HARTOS: Bartsch will be on deck.

17 MS. SHUMAKER: My name is Attilia
18 Shumaker, I represent the Wheeling Creek
19 Watershed Conservancy, the land owners of
20 Greene and Washington Counties.

21 There seems to be some misguided
22 direction to the point of this hearing.
23 Supposedly, the issue is a variance in the
24 hundred foot protection radius of the stream
25 bed with regard to mining and other

1 disturbances that might affect the stream.
2 It appears there is a motion to the effect of
3 permitting mining under a stream area if the
4 company can show it won't cause undue
5 sedimentation, some given distance below the
6 mined area. That might be an issue if in
7 fact the mining didn't completely destroy the
8 stream in the first place.

9 In most of the following instances, I
10 plan to show you there certainly isn't any
11 evidence of a sediment problem. In the first
12 picture you see, the bed of Laurel Run
13 outside of Waynesburg, which was mined under
14 a couple of years ago. You now have the
15 existence of a dry stream bed in the place of
16 a once viable flowing perennial stream.
17 You're right. There is no sediment problem
18 downstream here, there is no downstream.
19 Allowing mining under this stream has totally
20 destroyed the existence of said stream.
21 That's reason number one why the law needs to
22 be enforced, not altered or ignored.

23 The second reason is represented by
24 picture No. 2. This is a tributary of Kent
25 Run, located in the Wheeling Creek watershed

1 where mining was done last year.

2 A VOICE: That's upside-down.

3 MS. SHUMAKER: It doesn't make much
4 difference. Maybe if we can turn it
5 upside-down, the water might come back.

6 But as it is, there isn't much of a
7 chance in that.

8 A VOICE: That's because the law's
9 upside-down.

10 MS. SHUMAKER: Again, no problem with
11 sediment here either. This creek bed
12 couldn't hold any water to testify to that
13 criteria. That's the second reason why the
14 law needs to be enforced, not altered or
15 ignored.

16 A group of students from West Greene,
17 under my direction, had been testing the
18 waters of Enlow Fork in four given locations
19 for the past two and a half years. Site
20 No. 1 is a site where no mining has occurred
21 within a great distance of the stream bed,
22 and the stream remains a healthy, natural
23 habitat for fish and macro invertebrates.

24 Now, this picture, of course, was taken
25 some time ago before the stream was actually

1 undermined, period. Is that right side up?

2 How -- I'm sorry, this is how a stream
3 should look, and how it should stay.

4 Picture No. 3 is a large pooled area in
5 Enlow Fork. This is only one of several
6 pooled areas in the Wheeling Creek, and is
7 the second site we test. Enlow was mined
8 under some three years ago. Talk about
9 sedimentation downstream. This test area
10 boasts no macro invertebrates, and silt so
11 deep, my students can't even wade out into it
12 without being sucked into the muck.

13 Reason No. 3 why the law needs to be
14 enforced, not altered or ignored.

15 Just a mere month ago, mining occurred
16 around the community of Wind Ridge and
17 completely took the stream flowing behind the
18 Jones & Burns store. No sediment or silt
19 worries downstream here either, just another
20 reason the law needs to be enforced, not
21 altered or ignored. Obviously, the issue
22 isn't mining can be done under a stream and
23 not create sediment downstream. No, the
24 issue is can mining be done under a stream
25 and not destroy it, or cause its complete

1 demise. That appears not to be possible.

2 I hope you took your blinders off
3 before entering this building and can
4 rationalize that the regulations prohibiting
5 mining within the hundred foot limit of the
6 stream bed was set down by our forefathers
7 because they had enough foresight to realize
8 how important the streams were to the
9 citizens of the locality. Life cannot exist
10 if streams are lost. Losing our stream will
11 destroy any natural habitat existing in the
12 mining area, and making a living or a home
13 there will become impossible.

14 These are agricultural areas and
15 recreational areas, as well as just plain
16 home for many simple folks who just want to
17 have their water protected by this state and
18 not taken away from them by mining.

19 Your decision isn't if mining can be
20 done with minimal sediment. It is if mining
21 can be done without destruction of our
22 streams, period. These examples prove that
23 the law restricting mining inside the hundred
24 foot limit of the stream is not only
25 necessary, but needs to be enforced. Protect

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 our streams, save our dreams.

2 As I was getting ready to come down
3 here, since it was raining, I grabbed an
4 umbrella from the cupboard, and I flipped it
5 open, and I found it was the American Cancer
6 Society, and I thought, you know, "I've got
7 to do something that get their attention,
8 hopefully," and, you know, this umbrella said
9 to me, "This issue is an American cancer."
10 The destruction of our streams is an American
11 cancer.

12 A VOICE: Here, here.

13 MS. SHUMAKER: It is a cancer that can
14 be prevented, and it's up to you to see that
15 it is prevented, not look, or have them have
16 to look for a cure for things like those
17 streams that are totally destroyed at this
18 point in time.

19 Save the rest of our streams.

20 MR. HARTOS: Next speaker is David
21 Bartsch, and the speaker on deck will be Phil
22 Coleman.

23 MR. BARTSCH: Good evening, my name is
24 David Bartsch. I'm the environmental
25 coordinator and permit administrator for the

1 Ohio Valley Coal Company, located in
2 Alledonia, Ohio. We welcome this opportunity
3 to comment on the proposed modifications of
4 the Surface Mining Control and Reclamation
5 Act of 1977.

6 The Office of Surface Mining
7 Reclamation and Enforcement proposes changes
8 addressing surface mining and reclamation
9 operations, excess spoil, stream buffer
10 zoning and diversions. These changes will
11 impact our operations in Ohio, Pennsylvania,
12 Illinois and Kentucky, because regulatory
13 programs in which these operations are
14 located must be at least as stringent as the
15 OSM regulations.

16 In general, we support the concept
17 codified in the proposed rule changes;
18 however, we would like to inquire about some
19 of the proposed changes, and give our
20 rationale for why they should be modified
21 from the current proposal.

22 First, alternative analyses: The most
23 onerous proposal is the mandate to evaluate
24 alternative fill locations and sizes to
25 minimize adverse impacts on the prevailing

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 hydrologic balance, fish, wildlife and
2 related environmental values. We understand
3 and support the reason behind this proposal;
4 however, this proposal seems to ignore the
5 fact that both the United States Army Corps
6 of Engineers and the EPA require alternative
7 analyses in their Section 404 and 401
8 permitting, respectively. For operations to
9 occur within stream buffer zones, applicants
10 are required to obtain Section 401 and 404
11 certifications from these agencies. One
12 would think that an applicant would simply
13 copy the alternative analysis used for the
14 EPA and the Corps and put them into the
15 application for OSM or the regulatory
16 authority that has primacy in the state where
17 the operation will be located; however, the
18 OSM proposal differs, in that it evaluates
19 only the stream quality and features in its
20 alternative, whereas the EPA and the Corps
21 also allow evaluations of the impact that
22 each alternative has on the economics of the
23 project.

24 In our experience, analyses done for
25 the Corps and the EPA, many evaluate

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 different locations for placement of excess
2 spoil. The OSM proposal presents the
3 potential for a major controversy. There is
4 a potential for differing opinions between
5 the operator, OSM, EPA and the Corps given
6 the same alternatives.

7 When a second set of alternatives is
8 introduced, the potential exists for one
9 agency to opt for one alternative, based on
10 one set of guidelines, and a second, or even
11 a third agency opt for a different
12 alternative based on a different set of
13 guidelines. Why does OSM require a different
14 set of guidelines for its proposal analysis
15 than the guidelines used by the Corps of
16 Engineers and the EPA? Aren't all three
17 agencies concerned with protecting the same
18 stream that will be impacted?

19 OSM's alternative analysis seems to
20 mandate an operator to utilize some streams
21 because they might be of lower quality in
22 some way than other streams that may be
23 located, some undetermined distance from an
24 alternative stream.

25 Allow us to give an example of our

1 concern. The distance from the operation
2 must be considered in an analysis of the
3 alternative locations, along with the
4 economics that enter into the decision to
5 choose which stream will be impacted. For
6 instance, if all of the streams within an
7 economic operating area; that is, where it is
8 economical to place excess spoil, have an
9 uncertain quality -- or, have a certain
10 quality, and at some distance outside of the
11 range of the operation where it is
12 economically viable or even more efficient,
13 which would evidence itself in the economic
14 analysis, it needs to be clear that the
15 applicant will not be forced to evaluate or
16 opt for such an uneconomical alternative.
17 The lack of economical justification in this
18 proposed change to SMCRA sets applicants up
19 for financial disaster, and could close an
20 operation, or at least could negate some
21 reserves that would otherwise be viable. If,
22 at some future time, those same reserves
23 become economically viable, then the reserve
24 will be mined, but at a much higher cost than
25 if the area were to be mined in a logical

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 sequence. The point is, there will be stream
2 impacts in either case, and consideration
3 needs to be given to the most efficient
4 method of mining those reserves.

5 In the very least the proposed
6 requirement to perform these analyses
7 represents duplicative regulations for an
8 industry that is already more regulated than
9 any other industry, by far.

10 We do not argue that an alternative
11 analysis is needed. It is prudent of any
12 company to weigh its options, but to add
13 another alternative analysis, different than
14 the one currently in place by other agencies
15 is needless, especially when other analyses
16 should evaluate the same parameters. Perhaps
17 all that is needed is guidance for applicants
18 to include various stream locations and fill
19 sizes in the evaluations already done for the
20 Corps and EPA, and maybe we don't need
21 regulations at all.

22 We recommend that OSM, the EPA, the
23 Corps of Engineers meet with members of
24 industry and representatives of the public to
25 work out their differences to provide the

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 joint guidance document for evaluating these
2 alternatives before the proposed changes are
3 codified. Perhaps those proposed changes --
4 these proposed changes to SMCRA are
5 premature.

6 Second, the economic evaluation. The
7 economic evaluation found in this proposal is
8 deficient in light of the lack of the
9 economic justification required by the
10 proposed changes. The increases in the cost
11 to coal operators are given in terms of
12 additional costs associated with
13 documentation of the analyses and findings
14 required by these regulatory changes. The
15 evaluation is done, assuming all things are
16 being equal. In real life, that assumption
17 is hardly ever true. The evaluation did not
18 take into consideration the cost of the
19 additional time prior to mining for
20 evaluations of streams that will never be
21 impacted. It does not take into
22 consideration the additional costs of hauling
23 excess spoil to locations that would be
24 considered remote to where the coal is
25 actually being mined. In some rural areas,

1 remote locations might be less than one mile
2 away, by the way the crow flies, but maybe
3 several miles away via roads that would be
4 used. Do these proposed changes evaluate the
5 additional cost to construct new roads or
6 require new bonds for public roads that may
7 be required to reach the preferred
8 alternative streams? Do they account for the
9 hazards introduced by additional traffic that
10 would be forced to use public roads for
11 additional wear and tear on those roads that
12 operators would be responsible to repair? Do
13 they take into account the additional haulage
14 vehicles that would be required to keep an
15 operation efficient?

16 Mining companies must haul coal to
17 preparation facilities and to market;
18 however, haulage of excess spoil needs to be
19 minimized for the efficiency of the operation
20 and for costs to be in line. One might say
21 that everyone will have the same costs so it
22 will not matter whether an economic
23 justification is made or not. Some might
24 argue that times have changed, and that these
25 costs must now be included in the price of

1 mining; however, for some small operations,
2 those costs could be significant, and for
3 some areas, might mean that valuable coal
4 resources are not mined at all, hampering the
5 ability of some companies to meet legal
6 commitments to their customers, and who are
7 reluctant to raise the price they're willing
8 to pay for the coal.

9 Yes, one might state that it doesn't
10 matter about economics. We just might -- we
11 just want the streams to be -- to have
12 maximum stream protection; however, those
13 protections come at some price, and usually
14 is the mining company who must bear these
15 costs. Eventually, the industries that use
16 coal and their consumers ends up biting the
17 bullet and absorbing these costs. The
18 problem is that these costs are not
19 considered now, and no allowance is made for
20 the inefficiencies that would result, some
21 mining companies will reach a point where
22 they are forced out of business, and the
23 general public will suffer because of the
24 lack of jobs.

25 Studies show that mining -- that job

1 losses are not restricted to the mining
2 industry, but reach out to those who support
3 the miners, to specialized workers who make
4 mining equipment, and to regulators, but they
5 also include machine shop workers, bank
6 clerks, teachers, the gas station attendant,
7 the waitress or waiter at the restaurant, and
8 the list goes on. Like most things in life,
9 it all comes down to dollars and cents.

10 Opponents will argue that they are
11 willing to pay more to have clean streams.
12 We understand and appreciate that mind set.
13 Unfortunately, the proposed regulations do
14 not grant applicants the opportunity to
15 evaluate the economics so that efficiency of
16 the operation is considered. These comments
17 make it clear to us that guidance, and not
18 duplicative regulations will serve the
19 purpose of these regulations, and -- or,
20 these changes, excuse me, and if this
21 guidance can be achieved with the cooperation
22 of the agencies, industry and the public,
23 there will be benefits for all the parties,
24 and will be much more ready accepted by all
25 parties.

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 In conclusion, the Ohio Valley Coal
2 Company supports the general concepts behind
3 the proposed changes to 30 CFR 760, 816 and
4 817; however, the alternative analysis needs
5 to consider the implications on the
6 operations that these proposed changes will
7 have, and economics need to be included as a
8 logical part of any alternative analysis. We
9 favor the use of the alternative analysis
10 that are currently in use by the EPA and U.S.
11 Army Corps of Engineers, with some changes
12 that will be incorporated in a joint guidance
13 document. Our changes will make permitting
14 more efficient and responsive to the needs of
15 the applicants than the OSM proposed
16 regulations currently do, while safeguarding
17 the valuable resources in the areas where
18 mining occurs. At the same time, they will
19 provide for efficient recovery of other
20 valuable resources; jobs, the economy and
21 coal.

22 Again, the Ohio Valley Coal Company
23 wishes -- or, appreciates the opportunity to
24 comment on this important rule making. Thank
25 you for your time and attention.

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 MR. HARTOS: Phil Coleman is our next
2 speaker, and Wyona Coleman is on deck.

3 MR. COLEMAN: I'm Phil Coleman, I'm
4 here today representing the Pennsylvania
5 Chapter of the Sierra Club.

6 As I listened to the previous speaker,
7 I notice that some people's eyes were glazing
8 over, so I thought I would simplify for you
9 what he said. He said the coal industry
10 wants to go back to the way they have
11 operated for the past 150 years of dumping
12 their waste as close as they can to where
13 they take it out of the ground because that's
14 the cheapest.

15 A VOICE: Thanks, Phil.

16 MR. COLEMAN: As we travel around
17 Southwestern Pennsylvania, the scars left
18 from coal mining are inescapable. The giant
19 ash pile looms over Century III Mall. We
20 travel the new section of the Mon Valley Toll
21 Road, we are entertained by a scene of coal
22 waste heap after heap. If we walk around
23 little streams like Lily Run, which flows
24 past my house, or Pigeon Creek, or the
25 tributaries to Ten Mile Creek, or Chartiers

1 Creek, to name only a few, we find scars left
2 by coal mining past. If we remark, we are
3 told "Those were the old days. No one
4 pollutes like that anymore."

5 Of course, in Washington County and
6 Greene County, houses tilt out at angles,
7 corners far off, highways are cracked,
8 streams are dried up, other streams are
9 ponded and silted. We know these problems
10 aren't things of the past. They're everyday
11 events right now. And we are told by the
12 coal companies that they are complying with
13 the law. They don't mention that they wrote
14 the law. The coal companies also argue that
15 the coal is vital for our industries and
16 power plants, and they argue that with
17 tighter restrictions, they would quit mining
18 and people would lose their jobs.

19 Now, the big mines, and there are no
20 little mines, and the big companies that own
21 them, frequently foreign corporations want to
22 go one step further, they want to pile their
23 waste in little streams in order to save a
24 few bucks. In West Virginia a year ago, a
25 District Judge ruled coal companies were

1 violating the Clean Streams Act when they
2 dumped their waste, and all hell broke loose.
3 How dare a judge rule against the giant
4 corporations that are destroying the
5 landscape? He must be forgetting who lines
6 the pockets. Well, the politicians up and
7 down the line put a hold on his ruling. Now
8 the Bush Administration wants to offer a
9 final coup de grace. The Bush, EPA wants to
10 say it is perfectly legal to destroy our
11 streams, "No more buffer zones, just fill
12 them in." This is a ruling we are here this
13 evening to object to.

14 Let me make something clear. If coal
15 is vital for our economy, then it will be
16 mined regardless of price. Coal mining
17 threatens job losses, because coal companies
18 keep looking for ways to mine more coal with
19 fewer miners. If coal companies were really
20 worried about jobs, they would let the unions
21 organize their workers. Coal companies
22 belong to large corporations owned by people
23 who don't live along Lily Run or Pigeon Creek
24 or Ten Mile Creek or Chartiers Creek. Many
25 don't live in Pennsylvania; many don't live

1 in the United States. The corporations
2 themselves Consol and REG are German
3 companies. These corporations don't care
4 about people they don't know and streams they
5 never heard of. They will not confront the
6 landscape once the coal is gone; they will be
7 gone too. Come to think of it, the people
8 running this meeting will also be gone. Who
9 will remain to confront the new gob piles and
10 ash heaps? A few of our children will still
11 be here.

12 Thank you.

13 MR. HARTOS: Wyona Coleman is next, and
14 Diane McMahon is on deck.

15 MRS. COLEMAN: I am Wyona Coleman, and
16 I'm speaking here tonight as vice chair of
17 the Tri-State Citizens Mining Network.

18 I would like to incorporate my remarks
19 fully by reference to the over 70,000
20 comments opposing mountain top removal,
21 valley fills and environmental destruction
22 caused by these activities, which were
23 submitted during the public comment period
24 relative to the draft EIS.

25 The Clean Water Act contains a

1 provision which could, if enforced, protect
2 streams from destructive dumping of mine
3 overburden and waste. State and Federal
4 enforcement agencies regularly ignore that
5 safeguard in permitting mountain top removal
6 mining operations, which require valley
7 fills. In order to legitimize this illegal
8 activity, the Bush administration's Office of
9 Surface Mining proposes to repeal the buffer
10 zone rule that prohibits coal mining
11 activities from disturbing areas within 100
12 feet of streams.

13 In a blatant show of hypocrisy, OSM
14 claims that the changes to the rule will
15 actually increase protection by requiring
16 coal companies to show that they will
17 minimize the amount of waste and minimize the
18 adverse impacts of the valley streams; how?
19 The current rule provided that there should
20 be no adverse impact, and that rule should be
21 retained and enforced.

22 There is no more vital or valuable
23 resource than water, and the environment that
24 it nourishes. The protection of our water
25 resources should be the number one priority

1 of the Environmental Protect Agency of the
2 state regulatory agencies that regulate
3 mining and the Office of Surface Mining.

4 Citizens expect the OSM to provide the
5 oversight to insist that mine practices do
6 not violate the Clean Water Act, nor Surface
7 Mining Control and Reclamation Act. We never
8 envisioned that OSM's rule would be to weaken
9 regulations to enable the mine industry to
10 pollute and leave behind devastation that
11 will be with us for centuries.

12 Massive valley fills, which can be two
13 miles long and over 100 feet high -- and how
14 can you minimize that -- tower menacingly
15 over small communities which are increasingly
16 being pushed out of existence. More than 750
17 miles of streams have been buried in West
18 Virginia, and so far more than 300,000 acres
19 of hardwood forest have been destroyed.

20 Impoundments of coal waste sludge
21 pockets other valleys and threaten to break
22 out on unsuspecting public. Flooding
23 problems are a result of the bearing of the
24 mountains to reach the coal. While retaining
25 the existing buffer zone rule is extremely

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 important to preserve the mountain
2 environment in West Virginia, it is also
3 important for Pennsylvania, where both strip
4 and deep long wall mines continue to wreak
5 havoc. Valley fills very important head
6 water streams, and with the expansion of long
7 wall mining in Pennsylvania, particularly in
8 Greene and Washington Counties, it is
9 important to understand the potential
10 environmental impacts of the industry's waste
11 disposal techniques. More valley fills will
12 be needed, more settling ponds will be
13 needed.

14 We urge that the proposed rule be
15 aborted, and that the existing buffer zone
16 rule be retained and enforced.

17 MR. HARTOS: Thank you.

18 Diane McMahon, and Lisa Smith on deck.

19 MS. McMAHON: I am Diane McMahon. That
20 was close.

21 And I'm here because I am opposed to
22 any attempt to weaken or eliminate the stream
23 buffer zone rule that has protected streams
24 from coal mining activity for 20 years. The
25 changes to this rule proposed by the

1 Administration would eliminate important
2 protections for streams and allow mountain
3 top removal for coal mining companies to
4 further destroy and degrade waters in the
5 Appalachian region with their waste.

6 According to the administration's own
7 recently released studies on mountain top
8 removal coal mining, the immediate and long
9 term, environmental impacts of this form of
10 coal mining are severe and irreversible, and
11 I stand opposed, and I will do whatever I
12 need to do, email, snail mail, network,
13 rally, go to Washington, D.C., whatever I
14 need to do to let that be heard for myself
15 and for the generations of people that we're
16 protecting the environmental for years to
17 come.

18 MR. HARTOS: Lisa Smith, please, and on
19 deck will be Myron Arnowitt.

20 MS. SMITH: Good evening, my name is
21 Lisa Smith, I am an ecologist. I currently
22 serve on the board of directors of the
23 Mountain Watershed Association, the Allegheny
24 Land Trust, the Mid Atlantic Exotic Pest
25 Plant Council and the Natural Areas

1 Association. I live in Stahlstown,
2 Pennsylvania.

3 Today I am testifying on behalf of my
4 family and the Mountain Watershed Association
5 as their president. As an organization that
6 works tirelessly to clean up stream pollution
7 caused by mine drainage and agricultural
8 runoff, we find this proposed rule
9 ill-considered and overbearing. Any idea
10 that there could be a positive outcome by
11 allowing removal of stream buffers is hugely
12 mislead.

13 I'd like to state also at this point
14 that I'm incorporating herein by reference
15 all of the 70,000 plus comments that were
16 submitted opposing mountain top removal,
17 valley fills and the environmental
18 destruction caused by these activities in
19 response to the public comment period for the
20 draft environmental impact statement.

21 I don't think that I need to define
22 what a stream buffer is for this audience
23 certainly. What I would like to focus on is
24 the importance of these areas and the
25 resulting problems that are created when

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 stream buffers are eliminated.

2 The importance of stream buffers has
3 been documented in numerous scientific based
4 documents, with one of the most recent
5 compelling, being a publication supported by
6 American Rivers and Sierra Club entitled
7 "Where Rivers Are Born, The Scientific
8 Imperative for Defending Small Streams and
9 Wetlands."

10 This publication is authored by
11 numerous scientists, who are experts in the
12 field of environment science. I implore you
13 to read that document.

14 Stream buffers have special physical
15 and biological characteristics that provide
16 both direct and indirect benefit to humans.
17 Scientists often refer to these benefits to
18 humans as ecosystems services. Some of these
19 services include flood control, sediment,
20 nutrient and pollution filtering, nutrient
21 recycling, bank stabilization, ground water
22 recharge, critical habitat for wildlife.
23 Without going into detail about each of these
24 services, I'm going to be providing a full
25 testimony, which you can read about it more

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 there.

2 Suffice it to say that when forested
3 stream buffers are eliminated, the impact
4 includes everything from downstream flooding,
5 water pollution in the form of sedimentation,
6 nutrient loading and industrial waste, to the
7 elimination of thousands of living organisms
8 from both the terrestrial and aquatic
9 ecosystems.

10 In addition to these impacts, I would
11 like to point out a very important problem
12 that occurs when these fragile landscapes are
13 disturbed or destroyed, and that is the rapid
14 invasion and establishment of species that
15 are not native to the area. These plants and
16 animals are commonly referred to as invasive
17 exotic species, species that have been
18 introduced from other places, where they have
19 evolved largely free of natural controls,
20 such as predators and disease, things that
21 keep them in check. Areas of the landscape
22 that have been highly disturbed provide prime
23 habitat for invasive exotics to get a
24 foothold. Once established, they grow and
25 reproduce aggressively, while outcompeting

1 native species, and ultimately changing the
2 natural character and processes of a place.
3 The food and shelter that native birds,
4 insects, animals and plants have evolved to
5 depend on is eliminated, as are the ecosystem
6 services mentioned above. Since these exotic
7 species are not adapted to functions the same
8 way as our native species in this situation.

9 Japanese knotweed is a classic example
10 of a horrible invasive plant that establishes
11 easily in stream buffer areas that have been
12 disturbed. We have observed this happening
13 in the Kiski-Conemaugh Watershed, as well as
14 streams across the Mid-Atlantic region, where
15 the plant becomes established after a
16 forested buffer has been disturbed. The
17 Kiski-Conemaugh Watershed is the focus of an
18 expensive knotweed eradication program, one
19 of many in the country. There are numerous
20 other invasive exotic plants that have been
21 documented threats to forest buffers in the
22 region. Some include Japanese siltgrass,
23 purple loosestrife, Japanese spiraea, the
24 list goes on. Millions of dollars are being
25 spent by Federal, state and local programs to

1 control and manage invasive exotic species in
2 this country. Healthy, intact forest buffers
3 are critical to helping prevent the
4 introduction of these species along our
5 streams and rivers.

6 In conclusion, I'd like to reiterate
7 that stream buffers are necessary to maintain
8 the integrity of our stream and forest
9 ecosystems. Evidence of their importance
10 lies in the multitude of Federal, state and
11 local programs that are currently providing
12 funding to protect the existing stream
13 buffers, and to restore those that have been
14 lost to thoughtless land use activities. I
15 include a list of some of these programs in
16 my full testimony.

17 In the past ten years, Pennsylvania and
18 other states, I presume, have experienced the
19 formation of a large number of watershed
20 associations, organizations that form as a
21 result of local citizens' desires to protect
22 streams in their watersheds. These
23 organizations focus in part on maintaining
24 and promoting healthy forest buffers, and
25 they receive significant funding to do this

1 work. It makes absolutely no sense that we,
2 as a society, give any consideration to an
3 effort that intends to eliminate something
4 that we are working hard and paying dearly to
5 protect and restore.

6 Furthermore, while efforts to restore
7 riparian buffers along streams is noble, and
8 in fact does create an improved situation, it
9 is by no means a remedy for the ongoing
10 damage from other uses. Based on extensive
11 experience with acid mine drainage
12 remediation projects, the Mountain Water Shed
13 Association's position is that you do not
14 experiment with, or risk our water resources,
15 because once the hydrologic balance and
16 integrity are compromised, it is not a simple
17 matter or even a possible matter to restore
18 the system to a functioning level. This
19 proposed ruling has obvious unintended
20 consequences. We are concerned about the
21 overreaching nature of the proposed decision
22 and seeming lack of forethought that went
23 into its crafting.

24 Thank you.

25 MR. HARTOS: Next speaker will be Bev

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 Braverman, please, and on deck will be Joy
2 Sabl.

3 A VOICE: You forgot Myron. You named
4 his name, but you couldn't pronounce it.

5 MR. HARTOS: Oh, I'm sorry, Myron.
6 Myron.

7 MR. ARNOWITT: Arnowitt.

8 MR. HARTOS: Arnowitt.

9 MR. ARNOWITT: Good evening, my name is
10 Myron Arnowitt, I'm Western Pennsylvania
11 director for Clean Water Action. Clean Water
12 Action has 60,000 members here in
13 Pennsylvania, and over 700,000 nationally.

14 Clean Water Action has been around for
15 30 years, and we take any attack on the Clean
16 Water Act to heart, because our organization
17 was formed to get the original Clean Water
18 Act passed, and we've been very disturbed
19 over the past four years that the relentless
20 attack on the Clean Water Act, and one of the
21 biggest areas of this attack has been through
22 the mining activities of mountain top
23 removal, and greatly concerned about the
24 current proposed rule change that's before us
25 regarding stream buffers as an ongoing part

1 of the process to undermine, so to speak, the
2 Clean Water Act, and to ensure that mountain
3 top removal of coal can go forward.

4 We oppose any weakening of the buffer
5 zone rule as existed for several decades, and
6 we see no evidence that it should be changed
7 or eliminated. The idea that minimization of
8 impact is somehow a protection is a huge
9 misnomer. Minimization, from our reading,
10 means that we're going to do things for the
11 convenience of the mining company.
12 Minimization doesn't set a minimum, it just
13 says "Well, do as best you can," and that
14 could be a huge impact. The current buffer
15 zone rule has no adverse impact, and we
16 believe that is a standard that needs to be
17 maintained.

18 Secondly, we would oppose any rule
19 change that would allow fill to be put into
20 streams. This practice needs to be halted.
21 It is illegal, under the Clean Water Act. We
22 want to make sure that this is retained, so
23 any rule changes that result in allowance of
24 any waste going into streams, we would
25 oppose.

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 Finally, we have seen too many areas in
2 Pennsylvania already that have been damaged
3 by the mining industry, even with the buffer
4 zone rule. There have been numerous,
5 numerous surface mining permits in our area
6 that forever change our landscape and destroy
7 habitat and do harm to streams. Keeping the
8 buffer zone rule is a minimum thing that we
9 need in Pennsylvania. We're even seeing
10 proposals now to strip mine in Pittsburgh in
11 the city in the single largest area of
12 undeveloped space in Pittsburgh, and that's
13 something which we think needs to be changed.
14 Citizens want to see better protection of our
15 rules, protecting our waterways, not a
16 weakening of it.

17 And we hold the Bush Administration
18 accountable for the various attempts to
19 weaken the Clean Water Act, and the rules
20 that protect our water. We certainly urge
21 OSM to go in a different direction and ensure
22 that we have better protection and not worse
23 protection.

24 Lastly, there has been some discussion
25 earlier in the hearing concerning the

Linda M. Frost
Court Reporting Service
(724) 356-2206

1 economics of coal -- of mining, and the coal
2 companies, and whether or not there
3 are -- people are willing to pay the cost for
4 so called burdens on the mining companies. I
5 guess if those factors are factors that OSM
6 is using in its rule making, it should
7 certainly consider the economic impact of
8 affecting our water and our water ways.

9 Tourism in the second largest industry
10 in Pennsylvania. That's an industry that
11 depends on having clean water. It is a much
12 huger industry than mining, and just in
13 general, people are starting to realize, on
14 the economic side, we know that water is the
15 basis of our health that on the economic
16 side, there is not a community that can hope
17 to develop, if it doesn't have water. And
18 that's something which people understand now,
19 and which, if you are discussing the economic
20 side of the equation, you need to take into
21 account.

22 Thank you.

23
24 MR. HARTOS: Bev Braverman and Joy Sabl
25 will be on deck.