

PUBLIC HEARING

MARCH 30, 2004

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
PROPOSED RULE TO AMEND THE EXCESS SPOIL AND
STREAM BUFFER ZONE REGULATORY REQUIREMENTS

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1 MR. COKER: Good evening. Welcome to the
2 public hearing on the Department of Interior
3 Office of Surface Mining Reclamation and
4 Enforcement's proposed rule to amend the excess
5 spoil and stream buffer zone regulatory
6 requirements. I thank you all for coming. My
7 name is Jeff Coker. I'm a biological scientist
8 with the Office of Surface Mining and work out of
9 the Knoxville office. I have some -- some great
10 help this evening. Becky Hatmaker and I work
11 together and Becky is going to be our timekeeper
12 for our speakers. And, out front, the registrar
13 was Sheila Loftin. We all work in the Knoxville
14 office. I'm going to preside over the hearing
15 tonight. I'm going to read a short statement to
16 open the hearing. The purpose of tonight's
17 gathering is to hear your views regarding our
18 agency's proposal to amend the Federal Surface
19 Mining Regulations regarding excess spoil and
20 stream buffer zone requirements. The proposed
21 regulation changes were announced in the Federal
22 Register on January 7th, 2004. The summary in the
23 notice states that we, the Office of Surface of
24 Mining, are proposing to amend our regulations to
25 accomplish two basic goals, one, minimize the

1 adverse environmental effects from the
2 construction of excess spoil fills, and, two,
3 clarifying the circumstances in which mining
4 activities such as construction of excess spoil
5 fills may be allowed within the stream buffer
6 zone, that is within 100 feet of a perennial or
7 intermittent stream. By these proposed changes
8 we intend to clarify our program requirements and
9 reduce the regulatory uncertainty concerning these
10 matters. These changes will also reduce conflicts
11 and improve consistency between regulation under
12 the Surface Mining Control and Reclamation Act, or
13 SMCRA, and regulation under the Clean Water Act.
14 More specifically, we intend to minimize the
15 environmental effects from excess spoil fill
16 construction by requiring that the coal operator
17 demonstrate to the satisfaction of the regulatory
18 authority that to the extent possible the volume
19 of excess spoil is minimized. Excess spoil fills
20 associated with a mine are designed to be no
21 larger than needed to accommodate the anticipated
22 volume of excess spoil fill from that mine.
23 Alternative configurations for excess spoil
24 disposal including alternative sizes, numbers and
25 locations of fills are considered and the proposed

1 excess spoil disposal plan minimizes to the extent
2 possible adverse impact to the prevailing
3 hydrologic balance, fish, wildlife and related
4 environmental values. We also propose to amend
5 the regulation as commonly referred to as the
6 stream buffer zone rule to more closely align with
7 its basis in SMCRA and our experience in
8 implementing the rule. The proposed changes to
9 the stream buffer zone rule will require the
10 applicant to demonstrate that the mining operation
11 has been designed to the extent possible to
12 minimize the impacts to hydrology, fish and
13 wildlife and related environmental values and to
14 prevent additional contributions of sediment to
15 streams prior to allowing mining within 100 feet
16 of a perennial or intermittent stream. We propose
17 to revise the rule language that is evidently
18 confusing as giving rise to divergent conflicting
19 interpretations, has led to litigation and has
20 raised concern over restrictions that are not
21 required by SMCRA and that might conflict with
22 regulations under the Clean Water Act. Finally,
23 we propose to amend our stream diversion
24 regulation to comport with the proposed changes to
25 the stream buffer zone rule. If you have not done

1 so, we strongly encourage you to read the January
2 7th Federal Register notice. We have several
3 copies of the notice on the sign-in table out
4 front. If you have internet access, you can also
5 view or download the proposed rule notice by
6 visiting OSM's home page at www.OSMRE.gov. In the
7 January 7th notice we let you know how you could
8 comment on the rule and initially established a
9 comment deadline of March the 8th. Please note,
10 for this is important, at the request of several
11 commenters on February 26th we extended the
12 comment period for public input by an additional
13 30 days and the deadline for submitting comments
14 is now April 7th. There are several ways that you
15 can make your views known regarding these
16 proposals. You can mail or hand carry a letter
17 with your comments to the Office of Surface Mining
18 Reclamation and Enforcement, Administrative
19 Record, Room 101, 1951 Constitution Avenue
20 Northwest, Washington DC, 20240. Or you can
21 e-mail your comments to OSMRULES@OSMRE.gov.
22 Finally, you can testify at tonight's hearing if
23 you wish. This is one of five hearings that are
24 being held today. Other hearings are being
25 conducted in Washington DC, Hazard, Kentucky,

1 Charleston, West Virginia and Greentree,
2 Pennsylvania. If you have not done so, during
3 your first break please register your attendance
4 at tonight's hearing at the sign-in table located
5 just outside the back entrance into the room. And
6 if you want to speak tonight, this is important,
7 if you want to speak tonight, please so indicate
8 by marking yes on the registration card and
9 returning the card to the person at the sign-in
10 table. I will be calling you to speak in the
11 order in which we received your card. If you
12 would like to speak here this evening and need
13 assistance in any way, please let the person at
14 the sign-in table or myself know and we'll be
15 happy to assist you. At the front of the room a
16 court reporter is present to prepare a written
17 record and transcribe the statements made here.
18 Please don't be intimidated by either the reporter
19 or the formal structure of the hearing. Remember
20 that the purpose of this hearing is to obtain your
21 views on the proposed changes in the regulations
22 so that we can consider your comments when we
23 prepare a final action on these regulatory
24 changes. We are here to listen to you and we will
25 not debate the merits of the proposed rule or

1 answer any questions regarding the proposal. I
2 ask that you limit your comments to the proposal
3 and ask the audience to remain quiet during the
4 testimony. Please be respectful of each other.
5 We have scheduled this hearing for three hours.
6 Everyone who wants to speak will get the
7 opportunity to do so. So far, we have
8 approximately 20 people signed up to speak. In
9 order for us to insure that everyone has a chance
10 to speak, I ask that you limit your testimony to
11 no more than six minutes. In order to keep us on
12 time, we will use color cards to let you know how
13 much time you have remaining. When our
14 timekeeper, Becky over here, holds up a yellow
15 card, you will have 60 seconds left to finish.
16 When she shows you a red card, you will have 15
17 seconds to finish. I will call the name of the
18 speaker and the speaker to follow. I will -- when
19 you come forward as the speaker, please speak
20 clearly and loud enough so that everyone in the
21 room can hear. The speaker to follow should sit
22 in what we'll call the on-deck seat right here in
23 this corner. So when I call for -- I'll call for
24 two speakers. The first person that I call will
25 come on up to the podium. The second name I call

1 will come up and sit in this chair here preparing
2 themselves to come speak. I'll come up after
3 every speaker and introduce the next speaker that
4 will follow up in this chair here as the first --
5 the second person comes forward. At the beginning
6 of your testimony please state your name and
7 affiliation if you choose to provide one. If you
8 have a copy of your written statement, we would
9 appreciate it if you provide the statement to the
10 person at the sign-in table after you are through.
11 We will provide a copy of your statement to the
12 court reporter as it makes her job a little
13 easier. We will be taking a 10 minute recess at
14 approximately seven forty-five. Again, thanks to
15 everyone for coming. Now I am prepared to open
16 the meeting so that we can hear your comments on
17 the proposed rule. Let me call the first speaker
18 to the podium and that will be Landon Medley. And
19 after Mr. Medley, Wanda Hodge. If Ms. Hodge will
20 come up and go ahead and sit in this seat here so
21 that she'll be ready to go.

22 MS. HATMAKER: Jeff, announce that there
23 are a few chairs down here.

24 MR. COKER: If anybody needs some more
25 chairs, there are some more chairs down here and

1 you can feel free to take a chair from the front
2 up to the back of the room. We've got four more
3 chairs down here to sit in.

4 MR. MEDLEY: Is it okay if I sit?

5 MR. COKER: Sure. Here's a chair. You
6 got it?

7 MR. MEDLEY: Yeah. My name is Landon
8 Medley. I'm a former Van Buren County
9 Commissioner, I'm a former vice-president of the
10 greater Van Buren County Spencer Chamber of
11 Commerce, and I am the chairperson of the strip
12 mine issue committee of Save Our Cumberland
13 Mountains. I was asked by folks tonight to speak
14 in terms that everyone could understand and not to
15 get in terminology, stats, rules, regulations that
16 no one understood. In doing so, I would like to
17 state to State and Federal agencies tonight Humpty
18 Dumpty sat on a wall, Humpty Dumpty had a great
19 fall, all the king's horses and all the king's men
20 can't put Humpty Dumpty back together again. The
21 same childhood rhyme that we all remember when we
22 were young is proved today. We've destroyed our
23 streams and watersheds. We can't put back the
24 Smoky Mountains and the Cumberland Plateau again.
25 Since 1972 the State of Tennessee has recognized

1 the needs for the stream buffer zone rule. The
2 rule change is reminiscent of strip mining
3 before there was any regulations. The proposed
4 rule strikes language that says coal companies
5 must comply with all State and Federal laws. If
6 companies don't have to stop for streams, they
7 can mine the Cumberland Plateau from one end to
8 another. We remember how the AMAX Coal Company
9 wanted to strip mine Fall Creek Falls State Park's
10 watershed crossing the streams that feed the
11 number one state park in the southeastern United
12 States. We are losing more and more of our water
13 supply and resources in Tennessee. Water supply
14 is a critical issue in the state of Tennessee.
15 The proposed rule change will make it worse.
16 OSM's job is to implement SMCRA, not to make rules
17 to undermine it. The E in OSMRE is to enforce the
18 stream buffer zone rule, not to ease it. What the
19 Federal agencies will -- do will endanger the
20 State of Tennessee. We need our leaders in
21 Tennessee to stand up for -- and oppose this rule
22 change. It's the State's job to protect the
23 waters of Tennessee, which the rule change will
24 harm the streams. Once the mining is done, who
25 wants to take responsibility for the landscape?

1 Companies move to other sites and government
2 leaders change. The people who live in the
3 mountains and the valleys for decades will
4 continue to live there. They deserve better. I
5 oppose the rule change. The Knoxville field
6 office has not never said the stream buffer zone
7 rule was not working in Tennessee. The stream
8 buffer zone is a key part of issuing SMCRA permits
9 in Tennessee. Before proposing the rule change,
10 OSM should enforce the existing rule. More
11 specifically, OSM intends to justify stream
12 degradation by minimizing OSM's responsibility to
13 preserve and protect streams and water quality
14 endangered by surface coal mining activities. In
15 the opinion and experience of SOCM in our
16 membership department, the basic problem is not
17 the rule, but, rather, the problem is uneven
18 enforcement and lack of clear direction and
19 emphasis by OSM that stream protection is
20 paramount. Furthermore, it's SOCM's evaluation
21 that the proposed rule represents an attempt to
22 wordsmith a way to allow operators to continue
23 burying the nation's perennial and intermittent
24 streams at their convenience. It is a woeful
25 disregard of alternate and equally legitimate

1 values associated with maintenance of stream
2 integrity and health. Finally, OSM proposes to
3 amend zone regulations will further degrade our
4 nation's water supply in the proposed rule change
5 to the stream buffer zone rule. The purpose of
6 the moratorium, my understanding, was, first, to
7 enter into an agreement with the goal of enhancing
8 cooperation and communication in order to insure
9 compliance with all applicable Federal and State
10 laws, second, to improve timelines and
11 predictabilities in the permit process, and,
12 third, minimize adverse environmental impacts from
13 mountaintop mining operations and associated
14 valley fills. The proposed rule does not meet
15 that goal. It represents a return to pre-law
16 conditions and unfairly targets the coal field
17 communities and residents of a particularly
18 destructive form of discrimination. In closing,
19 back to nursery rhymes and fairy tales, this is
20 not a fairy tale. This is -- we do not have a
21 white knight in shining armor to safeguard the
22 Smoky Mountains. We only have OSM and Governor
23 Phil Bredesen. The purpose of the rule change is
24 like being in Dodge City with Matt Dillon without
25 a gun. The big bad wolf is at the door. God

1 bless Tennessee. Thank you.

2 MR. COKER: Folks, again, just give me
3 one second. If anybody in the back would like to
4 sneak around and come in the back door here and
5 take some of these chairs up to the folks that are
6 standing up in the back, by all means feel free
7 to. I don't think that -- I don't think that
8 would be disruptive to the speakers. As Ms. Hodge
9 comes forward, if John Johnson would please work
10 his way over to the on-deck circle, please.

11 MS. HODGE: Good evening. My name is
12 Wanda Hodge. Thanks to everybody for attending
13 tonight. I'm a SOCM member from Bledsoe County.
14 I am a board member of the Citizen's Coal Council
15 which is a coalition of groups just like SOCM
16 across the coal fields. Right now there are
17 hearings just like this one happening in three
18 other states and, as we heard also, Washington DC.
19 People across Appalachia are concerned about the
20 impact this rule change will have on our streams
21 and communities. I am concerned about the impact
22 this rule change will have on Tennessee. But in
23 some ways we are lucky. We have not yet seen the
24 kind of devastation that mountaintop removal is
25 causing in Kentucky and West Virginia. We have

1 not seen the huge problems with subsidence caused
2 by longwall mining in Pennsylvania. And I'd like
3 to interject one thing here. I was with the
4 Citizen's Coal Council in West Virginia a couple
5 of years ago and one of the groups had talked
6 about an elementary school that they went into and
7 they saw on the walls pictures that the children
8 had colored and painted and they had orange
9 streaks in the paper. And one of the people asked
10 what are these orange streaks? They said that's
11 our streams. So they don't even know what blue
12 streams are like in Kentucky and West Virginia.
13 Allowing mining in the 100 foot buffer zone, even
14 if companies are asked to attempt to minimize
15 the impact on streams, is just a way to speed up
16 the destruction that is happening in other
17 Appalachian states. This rule will result in more
18 valley fills and more streams being buried. This
19 rule promotes mountaintop removal. The Bush
20 administration needs to hear the people in
21 Pennsylvania, it needs to hear the people in West
22 Virginia, it needs to hear the people in Kentucky,
23 and right now it needs to hear the people from the
24 state of Tennessee and back off this rule change.
25 The stream buffer zone rule should not be

1 weakened, it should be enforced. It must be
2 enforced so that problems in other Appalachian
3 states don't continue and so that the kind of
4 destruction going on in neighboring states does
5 not come to our homes and communities here in
6 Tennessee. In addition to calling on the Bush
7 administration to keep the stream buffer zone, I
8 want to call on Governor Bredesen to take a stand.
9 Don't take us down the same path as West Virginia.
10 Governor Bredesen and George Bush, remember when
11 all the coal is gone we still want to have
12 communities to live in with healthy streams for
13 our children and grandchildren to enjoy. Thank
14 you.

15 MR. COKER: As Mr. Johnson comes up, the
16 next speaker will be Charles Lord.

17 MR. JOHNSON: Good evening. My name is
18 John Johnson. I'm an activist with KATUAH Earth
19 First, that's K-A-T-U-A-H. I am a resident of
20 Sequatchie County, Tennessee. I live on the side
21 of Doss (phonetic) Mountain which is part of the
22 beautiful Cumberland Plateau at the mouth of Lane
23 Cove which is also known as Cartwright Gulf on the
24 Hicks Creek watershed. There are abandoned mines
25 on our property and recently closed strip mines on

1 the USX property adjacent to where I live. Now
2 I'd like to read a quote from a book that's out
3 called To Save the Land and the People, A History
4 of Opposition to Surface Coal Mining in Appalachia
5 by Chad Montrey (phonetic) released by the
6 University of North Carolina Press in 2003. This
7 is the first paragraph of the book. One August
8 night in 1968 four men drove onto a strip mine
9 site owned by the Round Mountain Coal Company in
10 Leslie County, Kentucky. They shined a flashlight
11 in the eyes of the lone watchman, tied him up and
12 drove around in his Jeep for four hours quietly
13 and expertly setting the company's own explosive
14 charges. Just before sunrise they removed the
15 guard to a safe place, detonated the charges and
16 left behind the smoking holists of a giant diesel
17 shovel, a D-9 bulldozer, auger, conveyor belt,
18 three highlifts, a truck, three generators and one
19 Jeep. All together, the property damage totaled
20 seven hundred and fifty thousand dollars.
21 Detective J.E. Cromer of the State police force
22 described the destruction as the most extensive he
23 had ever seen in 11 years of investigating
24 sabotage. Yet company vice-president Bill Arnold
25 was supposedly dumbfounded about why anyone would

1 go to so much trouble to halt the mine's
2 operations. Now, these men were never caught.
3 But I would say to all of you all tonight that
4 they were not simply saboteurs, but patriots of
5 the highest order in the tradition of those who
6 carried out the Boston Tea Party, those who ran
7 the underground railroad, trade unionists who
8 worked for the eight-hour workday, the
9 suffragists who won women the right to vote.
10 They were defending their homeland from evil
11 destruction and greed. I did not come here
12 tonight to quibble with you all over the minuscule
13 details of your proposed regulations. To spend
14 time rationalizing this hard and destructive
15 activity known as mountaintop removal would be
16 like quibbling with the Nazis over how many Jews
17 to exterminate. I came here tonight not to ask
18 permission, not to beg, but to demand an absolute
19 end to all forms of destructive surface mining.
20 Mountaintop removal is the worst environmental
21 crime ever perpetuated against all life in
22 Southern and Central Appalachia. It has to stop
23 now. Don't rationalize it. Don't regulate it.
24 Stop it. All of you who commit, regulate or
25 otherwise support destructive mountaintop removal,

1 strip mining, surface mining, cross-ridge mining,
2 et cetera, will be held accountable for your
3 crimes against the culture and nature of
4 Appalachia. And on the water issue, the water
5 from here drains into the Tennessee River, that
6 drains into the Ohio River, that drains into the
7 Mississippi River and there is a fourteen square
8 mile dead zone down at the mouth of the
9 Mississippi River because of human-related
10 activities on the entire Mississippi watershed.
11 Mountaintop removal, clear-cut forestry,
12 destructive agriculture practices, all of those
13 contribute to that dead zone. You cannot do
14 mountaintop removal and other forms of strip
15 mining without irreparably damaging the forest,
16 waters and mountains of Appalachia. You cannot
17 minimize the damage. The coal companies and the
18 regulators are not God, are not Mother Nature.
19 You cannot undo the destruction you have wrought.
20 You are arrogant fools to think that you can
21 rebuild mountains and repair streams. Stop the
22 destruction now. The mountains, creeks and
23 forests of Appalachia are our collective life
24 support system. They make life both desirable and
25 possible here. Robert Clear Coal, Tennessee

1 Consolidated Coal Company, Arch Coal, Peabody
2 Coal, Massey Energy, Piston Coal, Skyline Coal and
3 the Office of Surface Mining are all criminals who
4 destroy the land in the name of profit and
5 short-sighted energy needs. Nobody has the right
6 to destroy people's land and life support systems
7 for cheap hair dryers and microwave ovens, things
8 that are not necessary for life here in Southern
9 Appalachia. However, clean water, forests,
10 mountains, air are all necessary for life. Profit
11 and microwave ovens are not. So stop the
12 destruction. Don't regulate it. And if you don't
13 stop, get ready for the citizens uprising.

14 MR. COKER: As Mr. Lord comes forward,
15 the next speaker will be Walter Stark.

16 MR. LORD: Good evening, everyone. I
17 have read this summary here in the Federal
18 Register and heard the man read it and it sounds
19 good, but, I'm sorry, I am cynical. This talking
20 about protecting streams and the environment is
21 not born out by the proposed rule change which
22 would lessen any control and make it easier for
23 mine operators to dump mountains into the valleys
24 and -- and spoil the streams. I speak for the
25 Obed Watershed Association and that flows into the

1 Emory, that flowed into the Tennessee. And these
2 streams will all be impacted and ruined if this --
3 if this rule change is approved. And I hope that
4 OSM will reconsider and not make any change to the
5 stream buffer zone. Thank you.

6 MR. COKER: After Mr. Stark, the next
7 speaker will be Ann League.

8 MR. STARK: I want to support what the
9 previous speakers have said that the current
10 buffer zone regulations should be maintained and
11 not weakened, because there needs to be support
12 for keeping the streams clean and alive. And
13 what's happened in West Virginia and some in
14 Kentucky is -- and their surface mining and
15 cross-ridge mining is unconscionable. Thank you.

16 MR. COKER: After Ms. League, the next
17 speaker will be Jeff Clark.

18 MS. LEAGUE: Man, we've got a good
19 turnout here tonight. I just want to say a little
20 something about how important this is to everybody
21 in the communities, the people involved, because
22 we're probably going to miss the Lady Vols game
23 tonight because we're here doing this, and this is
24 an important game. But when we get into this, it
25 just segways into my little thing, the SBZ was

1 created to protect people and people need water.
2 That's why it was created, to protect the water
3 which is going to protect us in the long run,
4 because we have to have water. Kids have to be
5 able to have a clean stream to play in. Who here
6 when they were a kid didn't go down to the creek,
7 play in it, catch minnows, catch crayfish, take
8 them home, drive your mother crazy because you had
9 this minnow and crayfish collection. If the SBZ
10 is weakened or eliminated, there aren't going to
11 be any streams for our kids to play in. If the
12 SBZ is weakened or eliminated, the farmers won't
13 have good clean water to irrigate their fields and
14 feed their -- water their livestock. People with
15 wells will be afraid of their wells because
16 they're afraid the groundwater will be
17 contaminated because the streams were not
18 protected. Another thing about the SBZ is
19 mountaintop removal. We've heard about it. Any
20 attempt to weaken or eliminate the stream buffer
21 zone is a death sentence for thousands of miles of
22 Appalachian streams. The incredibly diverse
23 wildlife in those streams will be decimated.
24 Over 1,200 miles of Appalachian streams have
25 already been damaged and destroyed by mountaintop

1 removal because the 100 foot buffer zone we have
2 now is not being properly enforced. A prime
3 example of that is in Campbell County on Zeb
4 Mountain, pretty much my backyard. I get to see
5 this mountaintop removal project every day. I get
6 to watch it grow. I go by and I see Dan Branch.
7 I saw it before they started this mountaintop
8 removal, what a pretty little gurgling stream it
9 was. Now it's nothing but a soot-filled
10 mine-spoiled laden stream that is no longer
11 capable of supporting the life it once was.
12 That's what's going to happen when the SBZ is
13 weakened. If it's eliminated completely, there
14 won't be a Dan Branch, there won't be any streams
15 for anyone to enjoy, the kids won't have any way
16 to drive their mothers crazy other than hoses and
17 who knows if that water is going to be any good
18 either. We have to have the buffer zone and it
19 has to be properly enforced. I call on the
20 Governor, the Feds, everybody, we need to keep the
21 stream buffer zone just to keep life livable.
22 Thank you again.

23 MR. COKER: After Mr. Clark, the next
24 speaker will be Gena Lewis.

25 MR. CLARK: This will be very short. I

1 just wanted to let the Office of Surface Mining
2 who apparently doesn't know it let them know that
3 common sense tells you that if you take the top of
4 a mountain off, all the streams that begin in it
5 are going to be damaged. If you remove all the
6 trees from around the streams, the streams are
7 going to be damaged. This continues to go on. I
8 don't understand how somebody who is supposed to
9 be on the side of the citizens enforcing these
10 rules continually tries to weaken them and
11 continually turns their eyes away. It would seem
12 to be coal miners and coal companies making large
13 donations to political parties or to someone
14 causing or allowing this to happen. That's all I
15 have. Thanks.

16 MR. COKER: After Ms. Lewis, the next
17 speaker will be Cathie Byrd.

18 MS. LEWIS: I'm Gena Lewis and I have
19 formal comments which are sort of technical and
20 probably pretty boring so I think I'm going to
21 leave those to the agency to read. One thing I
22 want to talk about is I want to talk about the
23 State of Tennessee and I want to talk about the
24 constitution of Tennessee and how Tennessee courts
25 have interpreted the constitution of Tennessee.

1 Tennessee courts have repeatedly affirmed that all
2 governmental power is inherent in the people. In
3 other words, in the state of Tennessee the people
4 are not subject to the government, but the
5 government is subject to the people. The
6 Tennessee constitution explicitly guarantees the
7 people the right to revolution and the Tennessee
8 Supreme Court has repeatedly stated that citizens
9 of the state of Tennessee actually do in fact have
10 a right to revolution and that therefore
11 government institutions in the state of Tennessee
12 are constrained very tightly as far as the power
13 that they may exercise. The Tennessee
14 constitution also declares that the doctrine of
15 non-resistance is absurd and slaverish. I don't
16 have the exact citation. It's either Article II
17 or III. You can look it up. And what I think
18 this means is that even though the Office of
19 Surface Mining is a Federal agency, that the
20 Office of Surface Mining should pay very close
21 attention to what the people of this state want.
22 And the Office of Surface Mining should not simply
23 focus upon the rules and upon its mandates but
24 should look beyond that and look to the citizens
25 of this state and look to the people who will be

1 affected by these rule changes. To not do so I
2 think would violate Tennesseans' rights under the
3 -- the Tennessee constitution at least and would
4 perhaps lead to a rather interesting
5 constitutional dilemma. But I think what this
6 meeting shows and I think what all the protests
7 about the Zeb Mountain mine show is that the
8 people of this state are adamantly opposed to
9 mountaintop mining, that Tennesseans do not want
10 mountaintop mining in their state under any
11 circumstances. And, in fact, over 200
12 Tennesseans have signed a petition to Governor
13 Bredesen stating that they want mountaintop mining
14 banned from the state, and, with your permission,
15 I would like to read into the record what the
16 people of Tennessee have said to Governor Bredesen
17 through this petition. Dear Governor Bredesen,
18 the Cumberland Plateau is one of the most
19 ecologically sensitive and important areas of the
20 United States. Rather than protect the plateau,
21 however, your administration has either done
22 nothing or aided in the plateau's destruction.
23 Your administration issued water quality permits
24 to the operators of one of the largest mountaintop
25 removal mines in the history of the state. Large

1 paper companies continue to destroy the plateau's
2 native forests, replacing those forests with
3 so-called pine plantations. The maintenance of
4 these pine plantations requires the aerial
5 spraying of pesticides which poison local
6 residents as well as wildlife. During your
7 campaign you promised to be the environmental
8 governor. I urge you to make good on the promise
9 and to protect the Cumberland Plateau, shut down
10 the Zeb Mountain mine, outlaw mountaintop removal,
11 no matter what the mining companies call it, ban
12 the aerial spraying of pesticides in connection
13 with pine plantations, halt the excessive logging
14 of Tennessee's native forests. I vote and care
15 about the Cumberland Mountains and I vote for
16 politicians who protect the environment. I think
17 that the fact that this petition has been signed
18 by Tennesseans of all walks of life, from
19 scientists to simply ordinary people of the state,
20 represents the broad report of Tennesseans for
21 strict environmental regulations and for strict
22 enforcement of environmental laws. And I think
23 therefore that beyond the technical comments
24 addressed specifically to the rules, which I have
25 them in my formal comments, before the Office of

1 Surface Mining in making any decision about these
2 rules should also take into account the fact that
3 the people of this state are adamantly opposed to
4 this practice. Thank you.

5 MR. COKER: I was informed that a Ms.
6 Lewis had chosen not to speak after filling the
7 card out, so -- okay. I'll go over that, Ms.
8 Byrd. The next speaker would be Mike Collenburger
9 (phonetic). Pardon me if I messed the name up.
10 Mike Collenburger.

11 MS. BYRD: My name is Cathie Byrd. I'm
12 the chairperson of the Campbell/Anderson chapter
13 of SOCM, Save Our Cumberland Mountains. I also
14 live near the confluence of Hudson Branch and Frog
15 Pond Hollow. These are two small streams whose
16 waters contribute to the Old Fort Creek and then
17 further downstream the Cumberland River. I
18 generally spend about five or six hours a week in
19 all kinds of weather following my hound dog
20 through the headwater areas that feed these two
21 streams. The ground underneath the litter of
22 leaves and twigs tells an interesting story, a
23 story of water and how these upper reaches of a
24 watershed catch the rain, slow it down and then
25 give it time to soak into the earth. I remember

1 the first time I went up there after a big rain
2 and saw these kind of funny looking trails that
3 went in all directions through the trees. They
4 left little ridges of leaves and sticks that had
5 loose dirt piled up behind them. Natural
6 depressions on the hillside that had been dry the
7 day before now had standing water or mud in them,
8 and dozens of little stream channels hidden under
9 the leaves and barely noticeable had trickles or
10 pools of water among the rocks. I realize that
11 what I was seeing firsthand is how a mountaintop
12 manages storm water well before it gets into the
13 larger streams like the ones that go by my house.
14 I also know that the quality and quantity of
15 waters in these streams and in my well is
16 maintained by slow filtration, storage and
17 nutrient processing in the upper reaches of these
18 streams on Braden Mountain. Nature is slowly but
19 surely repairing the damage from old logging and
20 mining areas in this area or mining operations in
21 this area, and yet these recovering headwater
22 areas would be the first to go under the new
23 stream buffer zone rule proposed by the Bush
24 administration. Without the 100 foot rule, a new
25 generation of mining contractors could take the

1 whole top off Braden Mountain and fill adjacent
2 zero order streams and wetlands with mining waste.
3 Who will clean up the mess next time? The mining
4 companies move on. Bush can't stay in office
5 forever. Bredesen won't be governor forever. And
6 the mountain's capacity to heal itself may be
7 damaged beyond conceivable repair. The only
8 people left to deal with it then will be the ones
9 who live there, and I won't even get into what
10 thousands of people further downstream may have to
11 pay to salvage their water supplies for drinking,
12 recreation or agriculture. I usually try to
13 remain polite during hearings like this, but I
14 have to tell you that the idea to eliminate the
15 100 foot stream buffer rule is one of the dumbest
16 I've ever heard of and I'm unequivocally opposed
17 to it. People who sit in Washington or dream this
18 stuff up need to get a life and get out here on
19 the mountaintops where they can see what really
20 goes on. And as for the Office of Surface Mining
21 Reclamation and Enforcement, you guys need to
22 cover the backside of your own acronym and get
23 tough enforcing the rules that are already in
24 place to protect the mountains, the watersheds and
25 the people who live there.

1 MR. COKER: As Mr. Collenburger comes up,
2 the next speaker would be David Hardeman.

3 MR. COLLENBURGER: How are you all doing?
4 I've been sitting here listening to the proposed
5 changes and two words that are leaping out at me
6 here is extent possible. They are willing in
7 nature when you put them back-to-back like that.
8 Who decides if they do make the effort to extent
9 possible? And can I get that inserted into my
10 1040 with the IRS? I will pay my taxes to the
11 extent possible this year, guys. But, seriously,
12 I've been a kayaker and a canoeist since 1968. I
13 canoed in kayak streams in Illinois, Missouri, all
14 through the Smokys. I've seen firsthand the good
15 the Clean Water Act has done and the stream buffer
16 zone. Streams that were dirty and filthy have
17 cleaned themselves up, because if we leave nature
18 alone, it will clean itself up. We don't need to
19 manage everything. Just leave it alone. It will
20 take care of itself. I hope all this is not --
21 this deck is not stacked against this, but I was
22 just reading yesterday that the new mercury
23 emissions rules, now we're going to have to revamp
24 it because it was found out the industry lobbyists
25 and representatives that wrote these new rules

1 also. I hope we don't see the day, but I think
2 some of our great grandchildren will, that water
3 will probably be more valuable than gold. Well,
4 it is now. You can't eat or drink gold. You
5 know, we've got two rovers up there on Mars
6 hunting for water because we know it's the basis
7 of all life, therefore zero tolerance. Let's hope
8 some day we're not sending rovers out there for
9 necessity to find clean water some place. Thank
10 you.

11 MR. COKER: As Mr. Hardeman comes up, the
12 next speaker would be Charles Comiskey.

13 MR. HARDEMAN: Hello. My name is David
14 Hardeman. I'm a member of Save Our Cumberland
15 Mountains. First, I'd like to say that I
16 appreciate this opportunity to voice my views on
17 this proposed rule change. This rule change is a
18 bad idea. All we have to do is go back 40 or 50
19 years on the Cumberland Plateau and look at the
20 many acres of abandoned strip mines and miles of
21 streams that were either mined through or had mine
22 spoil dumped into them and we can see what
23 devastating effect this has had on the fragile
24 streams. This rule was put in place for a
25 specific reason which can be seen if you look at

1 the areas that have been mined in the last 20 or
2 30 years or so. Protecting our last few pristine
3 mountain streams was the whole basis for the Fall
4 Creek Falls lands unsuitable petition. If you're
5 going to change this rule, you need to go the
6 other way with it by increasing the buffer zone or
7 at least enforce the rule that's in place now.
8 This is the only way that you can enforce
9 protection for these streams from the different
10 methods of strip mining. We hear every day of
11 water pollution from industry, farming, aerial
12 spraying, et cetera, et cetera. These all have
13 accumulative effects that is increasingly causing
14 degradation to our water supplies. And now you
15 want to destroy the very head of the stream, the
16 highest point, the starting point of nature's
17 water purification system and you want to destroy
18 that too. This is obviously an industry-driven
19 rule change to simplify obtaining mountaintop
20 removal permits. Well, we're not going to idly
21 stand by and watch this happen, and we're not
22 going to go away. We've been in this for a long
23 time and we're ready for the long haul. We ask
24 that you please consider -- reconsider and not go
25 through with this rule change. Think of the

1 long-term effects that it will have on the future
2 generations and if for no other reason do it for
3 our children's children's children. Thank you.

4 MR. COKER: After Mr. Comiskey, the next
5 speaker will be Charles Blankenship.

6 MR. COMISKEY: Hi, everybody. My name is
7 Charlie Comiskey. I'm an environmental scientist
8 with 26 years of professional experience and I'm
9 here today as a member of SOCM to address OSM's
10 proposed changes to the stream buffer rule. My
11 presentation or testimony is a little bit
12 technical but I've tried to keep it short so maybe
13 I can blast through it and we'll all be all right.
14 To support its proposed changes to the stream
15 buffer zone rule and the related disposal of
16 excess spoil, OSM has produced an environment
17 assessment which claims that the proposed action
18 will be quote impact neutral. Based on my
19 evaluation I have concluded, and I have 24 years
20 of NEPA experience, based on my evaluation I've
21 concluded that OSM has not made the case for
22 impact neutrality, and I'll use the time allotted
23 me to explain how I came to this conclusion and
24 why this EA, which is the technical support for
25 the action, is insufficient. Just to review a

1 little bit, the existing rule states that the
2 regulating authority may authorize an SBZ waiver
3 only upon finding that and the key clause will not
4 adversely affect the water quantity and quality or
5 other environmental resources of the stream. And
6 another fellow hit on this a little bit earlier,
7 but the revised rule says that the activities will
8 to the extent possible using the best technology
9 currently available prevent additional
10 contributions of suspended solvents to the stream
11 section within 100 feet downstream of the surface
12 mining activities and outside the area affected by
13 the surface mining activities and to minimize
14 disturbance and adverse impacts on fish, wildlife
15 and other related environmental values of the
16 stream. OS claims that these changes -- with
17 these changes the SBZ rule will, quote, more
18 closely reflect both SMCRA provisions on which the
19 rule is based and actual regulatory practices in
20 implementing the rule, unquote, or as stated in
21 the Federal Register notice, quote, will make the
22 rule consistent with our historical interpretation
23 of SMCRA rules. This perspective apparently
24 derives from the fact that OSM has interpreted no
25 adverse effects to mean that effects will be

1 minimized to the extent possible. This
2 interpretation has for more than two decades
3 allowed OSM and states to destroy hundreds of
4 miles of headwater streams including waters of the
5 US that should have been protected by the stream
6 buffer zone rule. OSM now wants to formalize this
7 interpretation in the SBZ rule itself. And also
8 by virtue of clause one that is preventing
9 contributions in the stream sector within 100 feet
10 downstream, by virtue of that clause OSM appears
11 to be embracing the concept of stream entirety.
12 That was rejected in both the Bragg decision and
13 the Department of Justice brief filed on behalf of
14 the Federal Appellates which agreed that, and this
15 is coming from the Department of Justice, the
16 burial of substantial portions of intermittent or
17 perennial streams and valley fills causes adverse
18 environmental impact in the fill stream segments
19 and therefore cannot be authorized consistent with
20 the stream buffer rule. The proposed rule is
21 inconsistent with these determinations by
22 focusing on the reach downstream of the mining
23 activities. The mining area essentially becomes a
24 zone of sacrifice. The absence of any teeth to
25 the proposed SBZ rule changes is evident in the

1 Federal Register notice where OSM discusses how
2 informed science-based decisions regarding
3 placement of excess spoil material will result
4 in the least environmental impact, and I quote,
5 for example, a permit applicant might evaluate
6 available alternatives such as placing a fill in
7 either a relatively pristine stream or a degraded
8 stream, unquote. So, in other words, informed
9 science-based decisions will be used to determine
10 which streams to destroy. If these changes are
11 adopted, the SBZ rule will become meaningless
12 and an SBZ waiver will require no greater
13 justification than is required for the mining
14 outside the SBZ and there will be no limit in the
15 magnitude of impacts as long as the mining
16 operation applies best technology currently
17 available. The environmental impacts associated
18 with these changes would in my estimation be
19 catastrophic. The mining industry will be given
20 carte blanche authority to destroy whatever is in
21 their way as long as they apply best technology
22 currently available. Now to move along here.
23 Based on my evaluation OSM's environmental
24 assessment is insufficient. Among the most
25 deficiencies are the following, the EA relies on

1 1983 data for its characterization of the effected
2 area. These data are more than two decades out of
3 date. Two, the EA is written with a preconceived
4 notion that the proposed action will be impact
5 neutral. This violates the spirit of NEPA for
6 objective evaluation. The EA is full of
7 statements such as minimize to the extent possible
8 if that causes least environmental harm. They are
9 applied to both the SBZ rule and the excess spoil
10 spill construction. These are non-objective,
11 unquantifiable and open-ended statements that
12 provide absolutely no guarantee to the public that
13 impacts will not be severe and unacceptable under
14 any reasonable measure of assessment. This is not
15 what NEPA requires for impact assessment. As it
16 stands, the EA provides no objective criteria for
17 impact assessment and assesses no impacts.

18 MR. COKER: After Mr. Blankenship, the
19 next speaker will be Frank Hensley.

20 MR. BLANKENSHIP: My name is Charles
21 Blankenship. I live in Campbell County,
22 Tennessee. Campbell County has more abandoned
23 mine lands in the state of Tennessee than any
24 other county in Tennessee. Strip mining came to
25 Campbell County in about 1955. We haven't had any

1 mining in this area for 30 or 40 years. This was
2 before the SMCRA rules took effect, and before
3 the rules took effect they had high walls up
4 there. About six months ago we had a company that
5 moved in Campbell County, Robert Clear Coal
6 Company. Since this company has started mining
7 there, which is like six months ago, the stream
8 which is Dan Branch went from where it was a
9 biological supporting stream to where it is now,
10 partially supporting. And this was done by
11 this examination of this stream. So in the six
12 month period this stream went from a supporting
13 biological stream to a partially supporting
14 stream. So this mining company, with the help of
15 OSM, is destroying the stream. This is just one
16 of six streams in this area. And this stream
17 should have the stream buffer zone. But through
18 OSM this stream buffer zone was eliminated. There
19 was water in this stream 24/7. I grew up in this
20 area and I'm fully aware of this stream. We put
21 in concerns of this stream to protect it and all
22 of our concerns to OSM were ignored. About this
23 stream buffer zone, we need to leave the existing
24 rule in place and start enforcing it, enforcing it
25 by OSM. This has not been done on Zeb Mountain in

1 Campbell County. This rule change will have a
2 huge impact on the streams. The beginning of the
3 stream on the mountain is a perennial stream, a
4 pristine stream. This is where the water begins.
5 It is impossible to mine next to the stream and
6 not impact the stream, so this rule just doesn't
7 make any sense. OSM needs to use a little bit of
8 common sense here. You don't move the sediment to
9 the stream, you keep it away from the stream. The
10 closer you get to the stream, the more sediment
11 enters the stream, so if you put the spoil next
12 to the stream, it's going to be in the stream.
13 There's no way to prevent it. When the runoffs
14 comes, it automatically goes into the stream.
15 This is a bad, bad rule change. The stream buffer
16 zone helps to protect life in any stream and helps
17 slow down storm waters so there is less flooding.
18 I am very concerned about how this rule change
19 will impact the people who live downstream. If
20 you contaminate the stream here at the beginning
21 of the headwaters, the people downstream is going
22 to be greater impacted. Water runs downhill.
23 This seems more like a stream destruction rule
24 than a stream protection rule. After that, ask
25 what is the real story here, who would make a

1 rule like this? Looks to me like the Federal
2 government is working for the coal company. They
3 are consolidating with the coal company. That's
4 my personal opinion. They need to quit consulting
5 and okaying these permits and start enforcing the
6 rules that's in the SMCRA regulations. If they
7 would do that, there would be less pollution in
8 the streams. This rule change takes us backwards.
9 This is worse than before SMCRA. Even before
10 SMCRA they gave some protection to the streams.
11 It is the State's job to protect the waters of
12 Tennessee, so we really want to see Governor
13 Bredeesen take a stand against this proposal.
14 Saying the mine companies must minimize impact to
15 the extent possible is like giving them a blank
16 check and saying you just go in there and do what
17 you want. That's what's happening here. These
18 guys will -- will put down this language in this
19 rule change and basically it's giving these mine
20 companies an okay to go in there and do whatever
21 they want to. And when these companies go in this
22 area, they -- they police themselves. If there's
23 no complaint filed, OSM does not get involved. My
24 family has lived in this area for several
25 generations. The property that I own has been in

1 my family 200 years. We've fished and played in
2 those streams. I want my grandchildren to be able
3 to come back here and play and fish in these same
4 streams. Thank you.

5 MR. COKER: After Mr. Hensley, the next
6 speaker will be Cindy Kendrick.

7 MR. HENSLEY: I'm Frank Hensley and I'm
8 with the Tennessee Citizens for Wilderness
9 Planning. We want the 100 foot buffer zone to
10 stay or to be increased, not eliminated. In 1977
11 the law that created OSM was very clear. And
12 today the OSM web site states one of the main
13 reasons, I quote, one of the main reasons the new
14 law was needed was to prevent future coal mining
15 from creating acid damage problems, unquote.
16 Digging and removing coal in or along the stream
17 or using a stream for a dumping site for
18 overburden runs counter to OSM's main reason for
19 existing. OSM's web site also states, quote, past
20 coal mining abuses have been eliminated, unquote.
21 I can tell you there are gross mining abuses going
22 on as we speak. The fact that strip mining is
23 even allowed in our mountains is abusive.
24 Tennessee has dirty coal which in almost all cases
25 cannot be strip mined without polluting our

1 streams, especially with no buffer zone. It's
2 mind boggling to see what our society pays so a
3 mine operator will extract a small amount of coal.
4 Thirteen miles from this room is a beautiful small
5 creek where over 40 years ago stripping took place
6 along and in the creek, no buffer zone. Today,
7 eight miles of Crab Orchard Creek are still
8 non-supporting or dead. Crab Orchard sends its
9 acid into the Emory River which flows through
10 Harriman and into Watts Bar Lake. We have dead
11 streams from strip mining in the Big South Fork,
12 the Emory and New River watersheds. One stream
13 that deserves special attention is the Obey,
14 O-B-E-Y, River. This beautiful stream was
15 destroyed by strip mining and after 40 years 33
16 miles is still non-supporting or dead. Without
17 millions of dollars of reclamation money, it's not
18 going to improve. What does the future look like
19 for our water? TVA is installing scrubbers which
20 will allow the burning of high sulphur coal. We
21 have high sulfur coal so we can expect a lot more
22 stripping in our Cumberlands and of course more
23 polluted streams. OSM must keep the 100 foot
24 buffer and leave future generations a little
25 something besides dead streams. Don't cave in to

1 the mining interests. Thank you.

2 MR. COKER: As Ms. Kendrick comes up, the
3 next speaker will be Paul Schmierbach.

4 MS. KENDRICK: I want to thank OSM for
5 having this hearing so that the citizens of
6 Tennessee can have comments on this proposed
7 rule-making. My name is Cindy Kendrick and these
8 comments are provided on behalf of Tennessee
9 Citizens for Wilderness Planning, a 450 member
10 group that has been an advocate for Tennessee's
11 natural resources for nearly four decades. Clean
12 water is the lifeblood of any civilization. In
13 Appalachia we're water rich with 35 to 80 average
14 inches of rainfall a year. This precipitation
15 feeds our ponds, streams, rivers, lakes and
16 groundwater. It provides water for drinking,
17 household use, fishing, swimming, boating and
18 other recreational activities. It supports
19 wildlife, farms and forests. Clean water is
20 essential for physical and spiritual survival and
21 health. Many factors in modern times threaten the
22 quality of our water and now we're facing a
23 growing concern, growing threat, from careless
24 coal mining and short-sighted administrations.
25 The buffer zone rule has stood as a safeguard to

1 protect mountain streams from disturbance from
2 mining activities since the Reagan era, 1983. It
3 prohibits coal mining activities from disturbing
4 areas within 100 feet of an intermittent or
5 perennial stream unless the industry can
6 demonstrate that activities would not harm water
7 quality or quantity. However, regulators have
8 been approving mountaintop removal mining and
9 valley fill permits in apparent violation of the
10 buffer zone rule. Using the checks and balances
11 of our democratic system, the courts have been
12 brought into play through citizen lawsuits to seek
13 enforcement of the buffer zone rule and protection
14 of our vital streams. The administration's
15 current move is to seek to change the rules so as
16 to legalize actions that would devastate our
17 streams. The proposed rule change would
18 drastically weaken protection for streams and
19 provide the mining industry with legal loopholes
20 to dump mining waste directly into streams.
21 Qualifiers would be introduced to provide a
22 sliding measure for approval. The industry need
23 only, quote, prevent to the extent possible using
24 best technology currently available, unquote,
25 devastating sedimentation within 100 feet

1 downstream and outside the mining area. Other
2 so-called clarifications would require that the
3 fill area be, quote, no larger than necessary,
4 unquote. Clearly lacking in the proposed
5 rule-making is the consideration that some mining
6 activities may be inherently too damaging and
7 should not be allowed at all. The proposed rules
8 are designed to allow applications to be approved
9 with industry promising to do the best it can.
10 With clear disregard for the opinion of the
11 majority of over 82,000 public comments, this
12 proposed rule-making was issued on the heels of a
13 comment period for the draft environmental impact
14 statement for mountaintop removal mining. The
15 vast majority of those comments urged more
16 stringent protection of our mountains and streams.
17 We now urge the Office of Surface Mining to listen
18 to the loud voice of this country's citizens and
19 withdraw this proposed rule-making. Thanks.

20 MR. COKER: After Mr. Schmierbach comes
21 up, the next speaker will be Kenneth Warren.

22 MR. SCHMIERBACH: Good evening. My name
23 is Paul Schmierbach. I'm an environmental program
24 manager with the Tennessee Department of
25 Environment and Conservation and I have a letter

1 here this evening from Commissioner Betty Child
2 from our department. She says thank you for
3 having a hearing in Tennessee regarding the
4 proposed changes to the rules governing surface
5 mining. I'm sorry I cannot be at the hearing
6 myself but I appreciate your allowing my comments
7 to be read into the record at the hearing. We
8 will submit a written copy as well before the
9 deadline. Whether and how mining impacts streams
10 in Tennessee are issues of great concerns to the
11 people of Tennessee and to the Department of
12 Environment and Conservation. Although the
13 Department does not have primacy to regulate
14 mining, we do regulate impacts to streams from
15 mining under the Clean Water Act and Tennessee's
16 Water Quality Control Act. We understand that the
17 Fourth Circuit Court of Appeals has ruled that OSM
18 has some discretion in regards to its regulation
19 of the disposal of excess spoil in or near
20 perennial and intermittent streams. We do not
21 agree with the manner in which OSM intends to
22 exercise that discretion in the proposed rule. We
23 understand that there may be some ambiguity in the
24 current rule as to when mining operations may be
25 approved to operate within 100 feet of the stream.

1 However, we urge OSM to resolve that ambiguity in
2 favor of allowing no additional adverse impacts to
3 the streams. We urge OSM to adopt a rule that
4 will maintain or enhance protection of the
5 streams.

6 MR. COKER: After Mr. Warren comes up,
7 the next speaker will be Ellen Martin.

8 MR. WARREN: My name is Kenneth Warren.
9 I'm from Anderson County. I feel like I'm
10 preaching to the choir, but it's nice to have a
11 nice large choir. The proposed changes to the
12 stream buffer zone have the necessary weasel words
13 to accommodate the mining industry. For 25 years
14 mining activity could not legally mine closer than
15 100 feet. To allow mining to operate closer than
16 100 feet or indeed even to mine through the
17 stream itself is to abandon our lovely natural
18 water courses to the mining industry. I oppose
19 the proposed rule change. Thank you.

20 MR. COKER: After Ms. Martin speaks, the
21 next speaker will be John Hepler.

22 MS. MARTIN: My name is Ellen Martin.
23 I'm speaking as the vice chair of SOCM's Board.
24 I'd like to thank OSM for hearing our comments.
25 Save Our Cumberlands Mountains has been working to

1 protect Tennessee communities from the negative
2 impact of strip mining for over 30 years. We are
3 an organization of over 2000 members in Tennessee,
4 many of whom live in the coal fields, coal field
5 counties, excuse me. I speak tonight for many
6 members of this organization. I would like to
7 address my comments to OSM and also to any members
8 of the State government who are in the audience.
9 I ask these State government members to take this
10 message back to Governor Bredesen. This rule
11 change may be an initiative of the Federal
12 government, but the State government still has the
13 responsibility of protecting the water resources
14 of Tennessee. I ask that members of the State
15 government urge Governor Bredesen to stand up to
16 the Bush administration and to speak out against
17 the proposed rule change. As far back as 1972
18 Tennessee recognized the importance of stream
19 buffer zones in our state surface mining law.
20 This proposed rule change takes us backwards by
21 threatening our mountain streams and communities.
22 A buffer zone is a common sense way to protect
23 water quality. If a company mines right up
24 against a stream, it's going to impact that
25 stream. It is well-established that a buffer zone

1 helps maintain stream quality and helps control
2 flooding. The plants in this buffer zone help to
3 slow down water flooding -- flowing into the
4 stream after rain events. Mining the land up to
5 the stream destroys these plants. Habitats are
6 altered, water temperature is changed and
7 uncontrollable sediment is produced. Headwater
8 streams, the very streams that would be most
9 impacted by this rule change, are where lakes and
10 rivers originate. These streams play an important
11 role in filtering water and are important to the
12 health of life downstream. Stream buffer zones
13 don't just protect the streams they border, they
14 also protect the Tennesseans who live downstream
15 and next to the strip mines. Mountaintop removal,
16 sometimes called cross-ridge mining, is just
17 making its way into Tennessee. The State of
18 Tennessee is on record saying that they will not
19 issue permits for mining through or for filling
20 streams. The proposed language of this rule would
21 allow companies to mine up against a stream,
22 through a stream or to fill a stream as long as
23 the coal operator made an effort to minimize
24 damages. This is a step backwards for Tennessee.
25 We have learned from past experiences that damages

1 will occur, damages that will affect generations
2 of Tennesseans. Protection of streams and
3 communities should not be left up to the goodwill
4 of the coal operator. This is the responsibility
5 of regulating authorities. OSM should not
6 undermine the State of Tennessee's attempts to
7 protect the streams and its communities. SOCM is
8 against the changes to the stream buffer zone
9 rule. We ask that the Office of Surface Mining
10 Reclamation and Enforcement stand for the people
11 of Tennessee and enforce the existing stream
12 buffer zone rule. Please remember that once the
13 coal is gone, Tennesseans will still have to
14 live in these communities. They will still want
15 and need clean, clear, living streams. Thank you.

16 MR. COKER: After Mr. Hepler, the next
17 speaker is Walter Wunderlich.

18 MR. HEPLER: Howdy. I'm John Hepler.
19 I'm from Jackson County. I'm a member of Save Our
20 Cumberland Mountains, also known as SOCM. And
21 SOCM came into being in response to strip mining,
22 thoughtless, pure profit-oriented mining which
23 resulted in the destruction of waterways and the
24 sullyng of good water. The laws that we have now
25 were made much by the efforts of old-time people