



U.S. Office of Surface Mining

News Release



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Office of Surface Mining Issues New Rule Tightening Restrictions on Excess Spoil, Coal Mine Waste, and Mining Activities in or Near Streams

(Washington) – The Office of Surface Mining Reclamation and Enforcement (OSM) announced publication in the Federal Register today of a Federal rule that places new restrictions on how coal mine operators can dispose of coal mine waste and the excess spoil created by the mining operation. The rule also requires that mine operators avoid disturbing perennial and intermittent streams to the extent possible and clarifies when mine operators must maintain an undisturbed buffer between the mine and adjacent streams.

“We believe that the new rule is consistent with a key purpose of the Surface Mining Law, which is to strike a balance between environmental protection and ensuring responsible production of the coal essential to the Nation’s energy supply,” stated C. Stephen Allred, Assistant Secretary of the Interior, Land and Minerals Management. “The new rule also fosters regulatory stability by clarifying the stream buffer zone rule and resolving long-standing controversy over how that rule should be applied,” he added.

The issue of how and where excess spoil can be disposed of has received conflicting interpretations by courts in recent years. In 1999, a Federal district court in West Virginia ruled that the stream buffer zone rule prohibits valley fills in streams. In 2001, the U.S. Court of Appeals for the Fourth Circuit reversed the 1999 decision on procedural grounds. In 2002, the same district court held that the Surface Mining Law did not authorize the disposal of overburden in streams, but the 4th Circuit Court disagreed.

Publication of the rule represents the culmination of a five-year process. OSM issued its first version of the proposed rules in January of 2004 and a revised proposal in August of 2007. While developing the rule, OSM solicited public input throughout the process. The agency received approximately 43,000 comments on the proposed rule during its comment period and held four public hearings attended by approximately 700 people. The rule appears in the Federal Register today and takes effect on January 12, 2009.

OSM prepared a detailed Environmental Impact Statement (EIS) that was made available earlier this year. Of the alternatives considered in the EIS, OSM selected the most environmentally protective alternative. The EIS concludes that the preferred alternative’s

net effect is positive because it requires coal mining operations to minimize certain impacts.

During surface mining, operators remove rock that overlies the coal deposits. The process of removing this rock — commonly referred to as overburden — fractures the rock, which causes it to increase in volume. In areas with steep slopes, some of the overburden cannot be returned to the mined-out area. The remaining overburden, known as excess spoil, typically is placed in the upper reaches of adjacent valleys.

To minimize the size of the excess spoil fills constructed in stream valleys, the new rule provides that mining operations must return as much of the overburden as possible to the excavation created by the mine. The new rule also provides that the operator must avoid constructing fills in streams to the extent possible. When avoidance is not possible, the operator must identify a range of reasonable alternatives for disposing of the remaining overburden and select the alternative with the least overall adverse environmental impact.

The new rule requires that the operator avoid disturbing land within 100 feet of a perennial or intermittent stream unless he or she can demonstrate that it is not reasonably possible to avoid disturbance, or that avoidance is not necessary to meet environmental requirements. The new rule also reiterates that the operator must comply with all requirements of the Clean Water Act before conducting any activities that require authorization under that law.

OSM carries out the requirements of the Surface Mining Control and Reclamation Act in cooperation with states and Indian tribes. OSM's objectives are to ensure that coal mining activities are conducted in a manner that protects citizens and the environment during mining, to ensure that the land is restored to beneficial use after mining, and to mitigate the effects of past mining by aggressively pursuing reclamation of abandoned coal mines.

[Text of Final Rule](#)

[Summary of Major Differences Between Proposed and Final Rule](#)

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