



U.S. Office of Surface Mining

# News Release



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## **OSM Schedules Public Hearings and Extends the Comment Period on Proposed Rule to Reduce Impacts of Valley Fills Constructed Near Streams**

(Washington) The U.S. Office of Surface Mining (OSM) has scheduled five public hearings to give the public an opportunity to comment on its proposed rules to enhance environmental protection applicable to excess spoil fill construction and clarify the circumstances in which coal mining activities may be allowed within 100 feet of a stream.

OSM is also extending the deadline for submitting written comments on the proposed rules by 30 days. The comment period was originally scheduled to close on March 8 but in response to a number of requests for additional time, will be extended until April 7, 2004, in order to give the public ample time to submit written comments on the proposed changes. OSM has also scheduled public hearings to receive comments in West Virginia, Pennsylvania, Kentucky, Tennessee and Washington, DC.

“We are extending the comment period and adding five public hearings to ensure that the public and all interested parties have every opportunity to weigh in on this important measure,” said Jeff Jarrett, director of OSM. “These improvements will clarify our program requirements and reduce the confusion that has enveloped the energy producers, regulators, and the public.”

If adopted, the proposed excess spoil rule would provide measurable and enforceable standards coal mine operators would have to meet and which are expected to reduce the number and size of future valley fills.

For more than 20 years, regulatory authorities have applied the stream buffer zone rule to limit downstream impacts from valley fill placement. The rule was never intended as an absolute prohibition against disturbing land within 100 feet of a stream, and has never been used as such. In fact, such a prohibition would conflict with other laws and regulations governing the placement of fill into streams. However, recent federal court rulings, later invalidated, have shown that as written, the rule was vulnerable to serious misinterpretation and was in need of clarification.

The proposed rules, which were initially published on January 7, 2004, in the Federal Register, would require coal operators to demonstrate:

- (1) Excess spoil is avoided or minimized;
- (2) Fills will be designed and constructed no larger than needed to accommodate the anticipated volume of excess spoil from that mine; and
- (3) Alternative fill locations and configurations are considered, and the preferred excess spoil disposal plan minimizes, to the extent possible, adverse impacts to the prevailing hydrologic balance, fish, wildlife, and related environmental values.

The proposed rules would also revise and clarify the stream buffer zone regulation to align it more closely to statutory requirements of the Surface Mining Control and Reclamation Act (SMCRA) and OSM's long experience of implementing the rule.

Since the proposed rule was published January 7, 2004, OSM has received questions as to whether this rulemaking is associated with and dependent upon the draft mountaintop mining–valley fill programmatic environmental impact statement (PEIS). OSM, three other Federal agencies and the West Virginia Department of Environmental Protection released the PEIS for public comment May 29, 2003.

OSM views this proposed rule changes as an action independent of the PEIS. Because of this view, OSM has written an environmental analysis in compliance with the National Environmental Policy Act (NEPA) to consider the specific effects on the human environment as the result of these proposed rules and alternatives to these rules. While work on the PEIS continues, OSM believes that this proposed rule is needed to expeditiously address the concerns regarding the construction of excess spoil fills and the regulatory uncertainty that has enveloped the stream buffer zone regulations.

In the December 23, 1998, Bragg v. Robertson settlement agreement that led to the initiation of this EIS, Paragraph 21 states: ". . . Nothing in this Settlement Agreement shall be construed to limit or modify the Federal Agencies' discretion to alter, amend, or revise from time to time any actions taken by them pursuant to this Settlement Agreement or to promulgate superseding regulations."

Interested persons may submit comments on this proposed rule by one of three methods. Comments may be mailed or hand carried to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, DC 20240, or comments may be sent via electronic mail to [OSMRULES@OSMRE.GOV](mailto:OSMRULES@OSMRE.GOV).

Citizens may also comment on the proposed rule by attending any of five public hearings scheduled at the times and locations below:

1. March 30, 2004, 6 p.m. to 9 p.m., Charleston Civic Center, Room 206, 200 Civic Center Drive, Charleston, WV.
2. March 30, 2004, 6 p.m. to 9 p.m., Best Western Parkway Center, 8th Floor in the Horizon room, 875 Greentree Road, Greentree, PA.
3. March 30, 2004, 6 p.m. to 9 p.m., Hazard Community College, Hazard Campus, Jolly Center, Room 208, One Community College Drive, Hazard, KY.
4. March 30, 2004, 6 p.m. to 9 p.m., Roane State Community College, O'Brien Building, Room 101, 276 Patton Lane, Harriman, TN.
5. March 30, 2004, from 2 p.m. to 4 p.m., Office of Surface Mining, South Interior Auditorium, 1951 Constitution Avenue NW, Washington, DC 20240. Please use the rear entrance to the building and have photo identification with you.

For more detailed information concerning the proposed rule, public hearings, or environmental assessment, OSM invites the reader to visit the following address:  
<http://www.osmre.gov/ocpropos.htm>

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