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Coalition sues over mining ruling

Revisions allow waste into streams

 BY JAMES BRUGGERS • JBRUGGERS@COURIER-JOURNAL.COM • DECEMBER 23, 2008

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A coalition of environmental groups including Kentucky Waterways Alliance has sued the Interior Department and U.S. [Environmental Protection Agency](#), seeking to overturn a new rule that will make it easier for mining companies to dump waste rock into streams.

The revisions, made final Dec. 12, will let mining companies disregard a 100-foot stream buffer zone if they are able to convince regulators that no other option was available and that they had taken steps to minimize harm to the environment.

Attorneys with Earthjustice, Appalachian Center for the Economy and the Environment, Appalachian Citizens Law Center, Sierra Club and Waterkeeper Alliance filed the legal challenge yesterday in U.S. District Court in Washington, D.C. The suit was filed on behalf of the Kentucky environmental group as well as the Southern Appalachian Mountain Stewards, Save Our Cumberland Mountains, West Virginia Highlands Conservancy, Coal River Mountain Watch and Ohio Valley Environmental Coalition.

If not overturned, the environmental groups from Kentucky, West Virginia or Tennessee said the rule change would lead to more mountaintop removal coal mining. That's the mining practice of using explosives on the tops and sides of mountains to get at underlying coal seams.

"The notion that coal mining companies can dump their wastes in streams without degrading them is a fantasy that the Bush administration is now trying to write into law," said Judith Petersen, executive director of Kentucky Waterways Alliance.

Specifically, the lawsuit alleges that the federal agencies violated environmental protection standards, failed to consider the cumulative effects of stream loss from mining, and failed to analyze a full range of alternatives, among other allegations.

At issue is a new Office of Surface Mining rule that revised a 25-year-old rule that generally prohibited mining within 100 feet of streams, but has been a source of controversy and confusion since it was challenged in a federal lawsuit in West Virginia in the late 1990s. Despite the rule, companies generally have been allowed to fill the upper reaches of stream beds in mountain hollows.

OSM officials have said the change was intended to "minimize disputes and misunderstandings" and to "clarify what buffer zone requirements apply."

On Dec. 2, EPA spokeswoman Ernesta Jones explained in a written statement why her agency concurred with OSM. She said the new rule was "intended to reduce the environmental impacts of surface coal mining and to provide mining operators clear standards for mining near bodies of water."

She also said that the EPA "worked closely with OSM to enhance environmental provisions in the final rule, including requirements that no mining activities may occur in or near streams that would violate federal or state water quality standards."

Mining officials in Kentucky have said that the new rule codifies existing practices and that the original buffer rule was never intended to protect "dry ditches."

Kentucky political leaders have, in recent weeks, been divided on the change.

Gov. Steve Beshear along with [Attorney General](#) Jack Conway and U.S. Reps. Ben Chandler and John Yarmuth wrote letters to the EPA opposing the rule change. But 20 Kentucky legislators, including House Speaker Jody Richards and House Majority Floor Leader Rocky Adkins, followed up with their own letter supporting the change.

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