

What “Buffer Zone’ Rule???

The Bush administration is proposing to remove the buffer from the buffer zone rule under the Surface Mining Control and Reclamation Act (SMCRA) that protects Appalachian streams from the disposal of mining waste. This is not a “clarification” as the administration suggests. Any fair reading reveals that the existing rule prohibits destroying streams and the proposed new rule allows it. The new proposal is the OPPOSITE of the existing rule, not a “clarification.”

Existing Buffer Zone Rule 30 CFR § 816.57

§ 816.57 Hydrologic balance: Stream buffer zones.

(a) **No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities**, unless the regulatory authority specifically authorizes surface mining activities closer to, or through, such a stream. The regulatory authority may authorize such activities only upon finding that—

(1) Surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with Sec. 816.43.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in Sec. 816.11.

[48 FR 30327, June 30, 1983]

Bush Administration’s New Rule (1/7/04 Proposal)

§ 816.57 Hydrologic balance: Stream buffer zones.

(a) General. You must first obtain specific approval from the regulatory authority before conducting surface mining activities within 100 feet of a perennial or intermittent stream. Except as provided in paragraph (b), the regulatory authority may authorize such activities only after making a written finding that the activities will—

(1) Not cause or contribute to a violation of applicable State or Federal water quality standards.

(2) Be conducted to minimize disturbances to the quantity and quality of water in the stream. This finding need not be made with respect to any reach of the stream that is upstream of a sedimentation pond located within the stream channel; provided that the pond meets the location requirements of § 816.46(c)(1)(ii) of this part.

(3) Be conducted in a manner that minimizes disturbances and adverse impacts to fish, wildlife, and related environmental values of the stream.

(b) **Placement of excess spoil in perennial or intermittent streams**. **The findings required in paragraphs (a)(1)-(3) do not apply to the construction of excess spoil fills in perennial or intermittent streams. To approve construction of fills in these streams, the regulatory authority must find that the applicant has—**

(1) **Minimized the creation of excess spoil to the maximum extent practicable as required under § 780.18(b)(3) of this chapter and § 816.102(b) of this part; and**

(2) **Designed the fill to avoid or minimize adverse impacts to perennial or intermittent streams to the extent required under § 780.16(c) of this chapter and § 816.97(f) of this part.**

For More Information, Contact Joan Mulhern, Senior Legislative Counsel, Earthjustice, at 202-667-4500