

Tensions High as EPA Reasserts Mining Authority

EPA Ceded Permitting Process to Army Corps Under Bush

By [Mike Lillis](#) 3/30/09 2:23 PM



A mountaintop mine in West Virginia (NRDC photo)

For environmentalists in the Appalachians, it was a roller-coaster week.

Just one day after the Environmental Protection Agency announced plans to reassert its powers to protect mountain streams from the ravages of mountaintop coal mining, the U.S. Army Corps of Engineers approved the broad expansion of such a project without EPA input.



Illustration by: Matt Mahurin

Many environmentalists are scratching their heads over the seemingly contradictory events. On the one hand, they are cheering the promise of a newly empowered EPA under the Obama White House, while also wondering when that vow will surface as policy. At stake are hundreds of miles of Appalachian streams that could be buried with pollutant-laden debris if scores of pending mining permits are approved as is.

The episode presents tough choices for the young administration, pressured to deliver the environmental protections it's promised while taking care not to hobble the powerful coal industry — an important economic engine in the Appalachian states — in the middle of a deepening recession. It also highlights the tensions between environmentalists trying to wean the country from a reliance on coal, which generates more than half the country's electricity, and industry defenders who hope to maintain its importance.

The recent saga began last Monday, when the EPA sent letters to the Army Corps of Engineers in Huntington, W.Va., recommending that the Corps either deny or alter proposed projects in West Virginia and Kentucky because agency studies show that the two mountaintop mines would have serious water-quality consequences. A day later, the EPA vowed to review hundreds more backlogged permit requests to assess their effect on streams.

Environmental groups embraced the developments as a sharp break from the hands-off EPA policies of the Bush administration, which left mine-permit decisions almost exclusively to the discretion of the Army Corps.

"What EPA is doing is reasserting the primacy of science," said Jim Hecker, environmental enforcement director at Public Justice, a public interest group. "The Corps has never cared about science."

On Wednesday, however, the Corps' Louisville district approved a 1.5-square-mile expansion of a mountaintop mine in Southeast Kentucky with no input from the EPA. The expansion of the International Coal Group's Thunder Ridge mine allows the company to fill four valleys with debris, burying nearly two miles of streams that drain into the Middle Fork of the Kentucky River. That river supplies drinking water to more than

700,000 people — roughly one-sixth of the state's population.

The permit approval, according to many environmentalists, directly contradicts the EPA's vow to play a larger role in the permit process.

"It's just completely outrageous, especially in light of the EPA's announcement just 24 hours before," said Judy Peterson, executive director of the Kentucky Waterways Alliance, which filed suit in December 2007 to block the Thunder Ridge expansion. "It's basically a slap in the face for the EPA. They said they were going to be reengaged in this issue, and they were nowhere in sight."

EPA spokeswoman Enesta Jones gave a terse "no comment" when asked about the Thunder Ridge permit approval. But Ron Elliott, spokesman for the Corps' Louisville district, was happy to talk. Elliott said the Corps presented the EPA with Thunder Ridge's expansion proposal several years ago when the application was submitted, and again in January of this year when approval was imminent. The new administration "had plenty of time" to weigh in on the permit, he said, but didn't do so.

"They chose not to comment," Elliott said. "That's why we thought there wasn't any need to coordinate. The silence is interpreted as concurrence."

The episode could prove to be a wakeup call for the EPA, which, despite its vow to review pending permits, has also emphasized that it's "not halting, holding or placing a moratorium on any of the mining permit applications. Plain and simple."

Some environmentalists maintain that last week's announcement will effectively delay the permit process. Matthew Wasson, director of programs at Appalachian Voices, an environmental group, said the EPA is not only reviewing the permits, but also working on new standards to govern the process. "There won't be any new permits until that's resolved," he said.

Some others, however, worry that the EPA reviews will do little good if the Corps begins approving controversial permits before the EPA can weigh in. "If the Corps is going to take these kinds of egregious actions," Peterson said, referring to the Thunder Ridge decision, "maybe EPA does need to put holds on these permits."

Under the Clean Water Act, the Corps handles most permit decisions, but the EPA can step in to delay pending permits — or veto those already approved — if the agency has reason to believe the disposal sites will harm water supplies or ecosystems.

The controversy swirls around mountaintop mining — a process in which companies blast the tops off of mountains to reach the coal seams within, creating moonscapes within the eons-old Appalachians. The process produces enormous amounts of debris, which is disposed by pushing it into adjacent valleys, some of which contain streams. The technique has grown popular — particularly in Virginia, West Virginia and Kentucky — for its efficiency: Companies can retrieve nearly all of the coal within the seam,

and they can rely more on explosives and machines than manual labor.

Defenders of the coal industry, including a number of powerful lawmakers, argue that the practice generates much-needed jobs in some of the most destitute areas of the country. The National Mining Association issued a statement last week calling the EPA's announcement "incomprehensible" and "especially troublesome from an administration that with one hand proposes enormous fiscal stimulus to put Americans back to work and with the other hand takes their jobs away."

Many lawmakers representing the coal producing states have weighed in with similar warnings. "Every job in West Virginia matters," Sen. Robert Byrd (D-W.Va.) said in a statement. "Everyone involved must act swiftly in concert and cooperation to remedy any problems that threaten coal jobs and the people who live in the local communities where coal is mined."

Yet critics of mountaintop mining are quick to point out that it creates far fewer jobs than other extraction methods. Indeed, the reason the companies choose to blow the tops off of mountains is to reduce labor and save costs. "This is a jobs issue," said Sierra Club spokesman Oliver Bernstein, "but they're on the wrong side of it."

Opponents also say the jobs aren't worth the flooding, water pollution and general decimation of local communities that often accompany the mining operations.

"The loss of community and the loss of culture is the real story here," said Cindy Rank, who chairs the mining committee at the West Virginia Highlands Conservancy.

The issue is timely because hundreds of permits have been backlogged awaiting a court ruling on the Corps' authority to issue permits without more extensive environmental impact studies. Overturning a lower court's ruling, the 4th U.S. Circuit Court of Appeals, based in coal-friendly Virginia, found last month that the Corps does indeed have the power to issue mountaintop permits without broader reviews.

Adora Andy, spokeswoman for the EPA, said there were between 150 and 200 permits on backlog awaiting the 4th Circuit decision. If approved, those projects would impact at least 211 miles of streams in West Virginia and Kentucky, according to Margaret Janes, senior policy analyst for the Appalachian Center for the Economy & the Environment, who analyzed 102 of the permits.

Peggy Noel, spokeswoman for the Corps' Huntington district, said the EPA's recent letters don't change the task or the direction of her office, where it's "just business as usual."

"We are a neutral agency," Noel said. "We're not for [the mines]; we're not against them. We're just here to evaluate and approve permits."

Yet with the conclusion of the 4th Circuit case, many observers fear that a

wave of approvals is soon to follow. “There’s a sense of urgency with these permits waiting in the pipeline,” said Bernstein, of the Sierra Club. “They’re ready to go.”

The urgency hasn’t been lost on some lawmakers. Last week, Sens. Lamar Alexander (R-Tenn.) and Ben Cardin (D-Md.) introduced legislation aimed at eliminating mountaintop mining by restricting what companies can dump into adjacent valleys. The idea is that if it becomes too expensive to truck the debris off the site, then companies will abandon the practice altogether.

“Coal is an essential part of our energy future,” Alexander said in a statement, “but it is not necessary to destroy our mountaintops in order to have enough coal.”

Companion House legislation, introduced earlier this month by Reps. Frank Pallone (D-N.J.) and Dave Reichert (R-Wash.), has 135 co-sponsors.

Yet in the face of opposition from some powerful congressional lawmakers — including Byrd and Senate Minority Leader Mitch McConnell (R-Ky.) — the legislation has a difficult road ahead. Environmentalists and other mountaintop mining critics are hoping the White House will step in to restrict the practice.

“Politically,” said Hecker, of Public Justice, “it’s easier to get the Obama administration to do it themselves.”