

November 22, 2007

Office of Surface Mining
Reclamation and Enforcement Administrative Record, Room 252-SIB
1951 Constitution Avenue, NW
Washington, DC 20240

**RE: Draft Environmental Impact Statement, Excess Spoil Minimization,
Stream Buffer Zones (OSM-EIS-34, April 2007): Docket Number RIN
1029-AC04**

Dear Sir or Madam:

I submit these comments on behalf of the Kentucky Waterways Alliance regarding the proposed Draft Environmental Impact Statement, Excess Spoil Minimization, Stream Buffer Zones (OSM-EIS-34, April 2007): Docket Number RIN 1029-AC04. The Kentucky Waterways Alliance, Inc. (KWA) is a statewide nonprofit organization dedicated to protecting and restoring our waterways. The Kentucky Waterways Alliance represents over 500 members and affiliate organizations united to insure high quality water resources in Kentucky for diverse recreational activities such as swimming, boating, and fishing as well as reliable drinking water supplies.

We request our formal comments on Stream Buffer Zone (SBZ) rulemaking submitted on March 5, 2004 be fully incorporated into the record as well (see attached).

Further we ask that over 70,000 comments opposing the illegal permitting of valley fills in violation of the Stream Buffer Zone rule that were submitted during the public comment period on the draft EIS on Mountaintop Mining/Valley Fills also be incorporated by reference in the record. Finally, we also wish to incorporate the numerous scientific studies conducted for that EIS that cite the ongoing destruction of our water, forest and human resources that have resulted from those permitting actions.

KWA comments have consistently stated that we believe proposed changes to the stream buffer zone rule would have significant adverse effects on the environment despite prior claims by OSM that the proposed changes were just clarifications. We believe that OSM's decision to prepare an environmental impact statement (EIS) is an admission as such.

The immediate and long-term environmental impacts of mining are severe and irreversible. Lapses in the enforcement of the stream buffer zone rule have allowed nearly 2000 miles of streams to be buried or degraded by mining waste. The proposed rule changes would repeal stream safeguards that have been in effect for over two decades. The draft EIS's own figures reveal that more than 1000 miles of streams will be destroyed every decade into the future.

The draft EIS documents that between 10/1/2001 and 6/30/2005, 1603 valley fills were approved in Appalachia, with 1079 in Kentucky and 372 in West Virginia. This assault on streams in

Kentucky and West Virginia has been devastating with 98% of all excess spoil fills nationally and approximately 61 percent of the length of all streams directly impacted by mining occurring in these two states.

Information obtained from the Office of Surface Mining Reclamation and Enforcement’s Lexington Field Office reveals an alarming trend to completely neglect the existing SBZ Rule requirements and permit the destruction of streams.

Year	Total # DSMRE Permits Issued by KDNR	Total # DSMRE Permits Issued with a SBZ Variance	Total # DSMRE Permits Issued with a SBZ size requirement of 0 (zero) feet.
2006	247	177	63
2005	205	136	84
2004	221	144	98
2003	224	172	101
2002	246	185	105
2001	256	179	102
Totals	1399	993	553

Between 2001 and 2006, in Kentucky alone, 71% of all DSMRE permits received a variance to the existing SBZ Rule and 56% of DSMRE permits issued with a SBZ variance required no stream buffer zone. Ultimately, 40% of all DSMRE permits issued completely neglect the existing SBZ Rule and allow mining activities in the stream channel. The Kentucky Waterways Alliance seriously doubts all of these permits issued with absolutely no stream buffer zone requirement have demonstrated no significant impact to water quality or quantity.

The Kentucky Waterways Alliance refutes the claim that Alternative 1 (OSM’s preferred alternative) is the most environmentally protective alternative. We believe the proposed SBZ rule detailed in the draft EIS will ultimately weaken existing stream protections by exempting stream crossings, in-stream sedimentation ponds, valley fills, and coal waste sludge ponds from compliance with the 100 foot stream buffer zone requirement unless the applicant for a variance demonstrates their activity will not impact water quality or quantity. By exempting these activities from the existing SBZ rule requirement, OSM is actually encouraging coal companies to mine through and bury streams.

Therefore, we request the US Department of the Interior’s Office of Surface Mining select the No Action Alternative and the proposed modifications of the Excess Spoil and Stream Buffer Zone Regulations detailed in Alternatives 1, 2, 3, and 4 be withdrawn and OSM enforce the existing Excess Spoil and Stream Buffer Zone Regulations as currently written.

The Kentucky Waterways Alliance categorically disagrees with the Draft EIS’s conclusion that none of the alternatives considered...would increase risks to threatened and endangered species or critical habitats. Because the draft EIS specifically states “the effects of surface coal mining and reclamation operations on threatened, endangered, or proposed species or critical habitats consists primarily of habitat alteration by land clearing and earthmoving operations.... and unique habitat features are difficult or impossible to replace”; **we request the USFWS provide in writing a public opinion on the draft EIS’s impact on threatened and endangered species.** KWA believes the draft EIS’s implementation constitutes an amplified threat to

the terrestrial and aquatic habitats of threatened and endangered species and will therefore contribute to increased takings of these federally protected species.

If OSM decides to continue the rulemaking process, any Draft Environmental Impact Statement must consider alternatives for strengthening the SBZ Rule and the cumulative environmental impacts of valley fills including but not limited to water quality, overall watershed biological and chemical health, terrestrial impacts including deforestation and impacts on interior forest bird species such as the Cerulean Warbler, and air quality impacts and toxic run off caused by the burning of coal.

KWA believes the Draft Environmental Impact Statement, Excess Spoil Minimization, Stream Buffer Zones (OSM-EIS-34, April 2007): Docket Number RIN 1029-AC04 has failed to:

1. Fully analyze the effectiveness, or ineffectiveness, of mitigation approved by the Army Corps of Engineers to offset harm caused by valley fills.
2. Analyze the need for new biological water quality standards and monitoring to help protect against adverse downstream impacts of valley fills. In Kentucky in particular, coal mining operations are impacting sensitive headwater streams that often contain endangered species. Over 800 miles of Kentucky's rivers and streams have documented populations of federal listed threatened and endangered aquatic species. These species on the edge of extinction require an extra margin of safety in the water quality standards.
3. Analyze the socio-economic and cultural importance of maintaining stream buffer zones.

OSM should withdraw the Draft Environmental Impact Statement, Excess Spoil Minimization, Stream Buffer Zones (OSM-EIS-34, April 2007): Docket Number RIN 1029-AC04 proposal and instead focus its efforts on:

1. Proper implementation of spoil management requirements, including restoration of approximate original contours (AOC) for mined areas.
2. Demanding more realistic calculations of excess spoil.
3. Prohibiting end- side- or wing-dumping of spoil, and requiring instead that material be hauled or conveyed in a manner that results in fills that are configured, designed and located to minimize the size and number of fills, and minimize their impact on streams.
4. Requiring that sediment structures be located off-stream or as close to the toe of any fill as possible rather than at the stream mouth, as has become common practice, and require that all diversion channels and other conveyances of stormwater be under permit.
5. Requiring that state programs conform their counterpart stream buffer zone regulations to assure that the buffer zone requirements attach throughout the stream reach rather than merely below the toe of any proposed fills, as Kentucky's rule provides.
6. Requiring a true alternatives analysis with emphasis on avoidance of impacts through better mine planning prior to approval of any instream disturbance, comparable in scope for any instream activity to that required by the 404(b)(1) guidelines.

The Kentucky Waterways Alliance opposes any attempt to weaken or eliminate the Stream Buffer Zones rule that protects streams from mining activities. The Stream Buffer Zones rule provides important protection for intermittent and perennial streams by prohibiting mining activities from disrupting areas within 100 feet of streams unless the applicant for a variance demonstrates their activity will not impact water quality or quantity. The proposed changes to the Stream Buffer Zones rule would eliminate these important protections for streams and allow mining activities to further bury, destroy and degrade the waters of the Commonwealth.

The US Department of the Interior should withdraw this attempt to weaken stream protections and leave the existing Excess Spoil and Stream Buffer Zones Regulations in place.

Thank you for considering our comments.

Respectfully Submitted,

Jason Flickner
Water Resources Program Director

CC: H. Dale Hall, Director, U.S. Fish and Wildlife Service