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Obama Administration Takes Unprecedented Steps to Reduce Environmental Impacts of Mountaintop Coal Mining, Announces Interagency Action Plan to Implement Reforms

Federal agencies take coordinated action to strengthen oversight and regulation, minimize adverse environmental consequences of mountaintop coal mining

WASHINGTON, DC – Obama Administration officials announced today that they are taking unprecedented steps to reduce the environmental impacts of mountaintop coal mining in the six Appalachian states of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia through a coordinated approach between the Environmental Protection Agency (EPA), Department of the Interior (DOI) and Army Corps of Engineers.

Through a Memorandum of Understanding signed by Lisa P. Jackson, Administrator of the Environmental Protection Agency; Ken Salazar, Secretary of the Interior; and Terrence “Rock” Salt, Acting Assistant Secretary of the Army for Civil Works, the Administration will implement an Interagency Action Plan on mountaintop coal mining that will:

- Minimize the adverse environmental consequences of mountaintop coal mining through short-term actions to be completed in 2009;
- Undertake longer-term actions to tighten the regulation of mountaintop coal mining;
- Ensure coordinated and stringent environmental reviews of permit applications under the Clean Water Act (CWA) and Surface Mining Control and Reclamation Act of 1997 (SMCRA);
- Engage the public through outreach events in the Appalachian region to help inform the development of Federal policy; and
- Federal Agencies will work in coordination with appropriate regional, state, and local entities to help diversify and strengthen the Appalachian regional economy and promote the health and welfare of Appalachian communities.

“Mountaintop coal mining cannot be predicated on the assumption of minimal oversight of its environmental impacts, and its permanent degradation of water quality. Stronger reviews and protections will safeguard the health of local waters, and thousands of acres of watersheds in Appalachia,” said EPA Administrator Lisa P. Jackson. “Our announcement today reaffirms EPA’s fundamental responsibility for protecting the water quality and environmental integrity of streams,

rivers, and wetlands under the Clean Water Act. Getting this right is important to coalfield communities that count on a livable environment, both during mining and after coal companies move to other sites.”

“The Army is pleased to support interagency efforts to increase environmental protection requirements and factual considerations for mountaintop coal mining activities in Appalachia,” said Terrence “Rock” Salt, Acting Assistant Secretary of the Army for Civil Works. “The initiative being announced today will allow us to move forward on a number of important permit applications while providing improved certainty and transparency to permit applicants and the public.”

“The steps we are taking today are a firm departure from the previous Administration's approach to mountaintop coal mining, which failed to protect our communities, water, and wildlife in Appalachia,” said Secretary Salazar. “By toughening enforcement standards, by looking for common-sense improvements to our rules and regulations, and by coordinating our efforts with other agencies, we will immediately make progress toward reducing the environmental impacts of mountaintop coal mining.”

“This agreement represents federal agencies working together to take the President’s message on mountaintop coal mining into action,” said Nancy Sutley, Chair of the White House Council on Environmental Quality. “We are committed to powering our country while protecting health and welfare in the Appalachian region, securing access to clean streams and safe drinking water, and honoring our clean water laws.”

In close coordination, EPA, DOI, and the Corps will take several short-term actions to reform the regulation of mountaintop coal mining under the two primary environmental laws governing this mining practice.

The Army Corps of Engineers and the Environmental Protection Agency will take immediate steps under the CWA to minimize environmental harm by taking the following actions in 2009:

- Requiring more stringent environmental reviews for future permit applications for mountaintop coal mining;
- Within 30 days of the date of the MOU, the Corps will issue a public notice (pursuant to 33 C.F.R. § 330.5) proposing to modify Nationwide Permit (NWP) 21 to preclude its use to authorize the discharge of fill material into streams for surface coal mining activities in the Appalachian region, and will seek public comment on the proposed action;
- Strengthening permit reviews under CWA regulations (Section 404(b)(1)) to reduce the harmful direct and cumulative environmental impacts of mountaintop coal mining on streams and watersheds;
- Strengthening EPA coordination with states on water pollution permits for discharges from valley fills and state water quality certifications for mountaintop coal mining operations; and
- Improving stream mitigation projects to increase ecological performance and compensate for losses of these important waters of the United States.

The Department of Interior will also take the following steps:

- Reevaluate and determine how the Office of Surface Mining Reclamation and Enforcement (OSM) will more effectively conduct oversight of state permitting, state enforcement, and regulatory activities under SMCRA;

- Ensure the protection of wildlife resources and endangered species by coordinating the development of CWA guidance with the U.S. Fish and Wildlife Service (FWS); and
- If the U.S. District Court vacates the 2008 Stream Buffer Zone Rule, as requested by the Secretary of the Interior on April 27, 2009, Interior will issue guidance clarifying the application of stream buffer zone provisions in a preexisting 1983 SMCRA regulation to ensure mining activities will occur in a more environmentally protective way in or near Appalachian streams.

Concurrent with these short-term actions, the three agencies will embark on a comprehensive, coordinated review of their existing respective regulations and procedures governing mountaintop coal mining under existing law. The agencies will also create an interagency working group to promote ongoing Federal collaboration and ensure the Action Plan achieves results. As these reforms are implemented, the agencies will seek to involve the public and guide Federal actions through robust public comment and outreach.

EPA and the Army Corps of Engineers are today taking steps to enhance coordination in the environmental review of pending Clean Water Act permits for surface coal mining activities in Appalachian States. Administrator Jackson and Acting Assistant Secretary Salt have directed EPA and Corps field offices to coordinate under new procedures to ensure Clean Water Act permit decisions are fully consistent with sound science and the law, reduce adverse environmental impacts, provide greater public participation and transparency, and address pending permits in a more timely manner.

The Federal agencies will also work in coordination with appropriate regional, state, and local entities to help diversify and strengthen the Appalachian regional economy and promote the health and welfare of Appalachian communities. This interagency effort will have a special focus on stimulating clean enterprise and green jobs development, encouraging better coordination among existing federal efforts, and supporting innovative new ideas and initiatives.

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