Overview of the Office of Surface Mining's efforts to better protect streams from the adverse impacts of coal mining.

Indiana Society of Mining and Reclamation
Surface Mined Land Reclamation Technology Transfer Seminar

December 2010

Why another stream rule?

- 2008 rule immediately challenged in court.
- Settlement agreements resulted in OSM to put forth best effort to develop a stream rule by 2012.
- Interagency action plan (IAP) to significantly reduce the harmful environmental consequences of Appalachian surface coal mining operations

Court Challenges to the 2008 rule

- Coal River Mountain Watch, et al. v. Salazar, No. 08-2212 (D.D.C.) ("Coal River") .

- National Parks Conservation Ass'n v. Salazar, No. 09-115 (D.D.C.) ("NPCA").
  - Government applied for voluntary remand and vacatur of rule stating that consultation under the ESA was not initiated for the 2008 rule.
  - Remand was denied due to concerns over Administrative Procedure Act requirements.

Interagency Action Plan

- June 11, 2009 MOU between OSM, Corps, EPA
- Included guidance in implementing the 1983 rule if the 2008 rule was remanded.
- The 2008 rule was not remanded, this committed OSM to consider rule revisions, including but not limited to the 2008 rule.
- Specific to six states in the Appalachian Region

Why pursue a national rule to address issues in Central Appalachia?

- OSM has stated in its notice of intent that "it would not be fair, appropriate, scientifically valid or consistent with the principles of SMCRA to apply the new protections only in central Appalachia".

- Although the 2008 excess spoil rule and the Interagency Action Plan are predominantly Appalachian issues, streams are ecologically significant regardless of the region in which they are located.

Why pursue a national rule to address issues in Central Appalachia?

- Where Congress intended to establish regional differences in reclamation requirements, it either did so in the statute or included statutory language directing OSM to consider those differences in developing rules.

- Title 1 of SMCRA "surface mining and reclamation standards are essential in order to insure that competition in interstate commerce among sellers of coal produced in different States will not be used to undermine the ability of the several States to improve and maintain adequate standards on coal mining operations within their borders;"

What 30 CFR sections will be revised?

- Scope extends beyond excess spoil and stream buffer zones addressed in the 2008 rule.
- The rule incorporates a comprehensive approach to stream protection .
- The rule also addresses other environmental protection concerns identified in response to the Nov 2009 Advance notice of proposed rulemaking, which is consistent with the MOU.

Principal elements of the proposed rule:

- Provisions for gathering more specific baseline data on hydrology, geology, and aquatic biology.
- Revising regulations governing activities in or near streams.
- Defining material damage the hydrological balance including clarifications for producing CHIAs and determining PHCs.

Principal elements of the proposed rule (cont.):

- update of the definitions for perennial, intermittent, and ephemeral streams.
- revisions of the backfilling and grading rules, excess spoil rules, and approximate original contour restoration requirements
- incorporate landform restoration principles and the development of more effective requirements for variances and exceptions from approximate original contour restoration.

When will the rule draft be released

- Proposed rule to be released in early spring (April) 2011
  - Draft EIS released along with the draft rule.
  - Associated 60 day comment period for both the proposed rule and the draft EIS.

- Final rule will likely reflect changes made in consideration of comments received.

What about the Environmental Impact Statement?

- OSM has decide to prepare a new EIS rather than supplement the 2008 SBZ-Excess Spoil Minimization rule in consideration of the expanded scope of the proposed rule.

- A range of reasonable alternatives, including a no-action alternative of implementing the 2008 rule will be developed and analyzed as within the EIS

Where Can I find more information

- OSM web page
  - http://www.osmre.gov/topic/StreamProtection/StreamProtectionOverview.shtm

- Federal register notices:
  - Advanced notice of proposed rulemaking: Federal Register / Vol. 74, No. 228 / Monday, November 30, 2009
  - Proposed rule; notice of intent to prepare an environmental impact statement.: Federal Register / Vol. 75, No. 117 / Friday, June 18, 2010