



## FACT SHEET

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2 April 2010

The Assistant Secretary of the Army for Civil Works recently directed the U.S. Army Corps of Engineers (“Corps”) to expeditiously initiate rulemaking to propose a modification to the Corps regulations (i.e., 33 C.F.R. Part 325, Appendix B). This action is to reflect a limited change in policy addressing implementation of the National Environmental Policy Act (“NEPA”) for permit applications under Section 404 of the Clean Water Act (“CWA”) associated with surface coal mining activities in Appalachia. Specifically, the Corps will seek public comments in regard to a proposed revision to Appendix B (including various alternatives) that will expand the NEPA scope of analysis to consider all of the effects of proposed surface coal mining “valley fills” on the aquatic environment.

On June 11, 2009, the Department of the Army, the Department of Interior (“DOI”) and the Environmental Protection Agency (“EPA”) signed a Memorandum of Understanding (“MOU”) announcing an Interagency Action Plan designed to significantly reduce the harmful environmental consequences of Appalachian surface coal mining operations, while ensuring that future mining remains consistent with federal law. Signatory parties to the MOA committed to reviewing their existing regulatory authorities and procedures to determine whether regulatory modifications should be proposed to better protect the environment and public health from the impacts of Appalachian surface coal mining. This rulemaking initiative is a step in the direction of fulfilling the Army’s commitment.

The Army’s rulemaking will reflect and build upon the facts that DOI’s Office of Surface Mining Reclamation and Enforcement (“OSM”) is the primary authority under the Surface Mining Control and Reclamation Act (SMCRA) for regulating all aspects of surface coal mining activities, and that EPA and the states continue to have the primary responsibility for protecting water quality by means of Section 401 and 402 of the CWA.

The Corps will continue to work closely with EPA and DOI to coordinate its rulemaking effort with other Administration initiatives already underway, including OSM’s new rulemaking intended to replace the 2008 stream buffer zone provisions with rules that better protect streams from the adverse impact of surface coal mining.

Results of the Army rulemaking effort will be published in the Federal Register upon conclusion of the process.

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