Frequently Asked Questions:

Q1: What is supposed to be the result of this EIS?

A1: The purpose of the EIS, according to the Notice of Intent published in the Federal Register on February 5, 1999, is:

"*...to consider developing agency policies, guidance, and coordinated agency decision-making processes to minimize, to the maximum extent practicable, the adverse environmental effects to waters of the United States and to fish and wildlife resources affected by mountaintop mining operations, and to environmental resources that could be affected by the size and location of excess spoil disposal sites in valley fills*."

Q2: Will mountaintop mining/valley fills (MTM/VF) continue to be permitted?

A2: Yes. Congress enacted the Surface Mining Control and Reclamation Act (SMCRA) with the intent of balancing the energy needs of the nation with environmental protection. SMCRA allows for surface coal mining and mountaintop mining/valley fills (MTM/VF) was identified as an acceptable type of mining. Section 404 of the Clean Water Act (CWA) can allow for valley fills after an environmental review. In the draft EIS, the term “mountaintop mining” is defined as surface coal mining occurring on mountaintops, ridges, and other steep slopes (by definition those of 20 degrees or more). It encompasses a variety of surface mining methods, including: contour, area, auger, and mountaintop removal mining and typically results in excess rock and spoil material that may be placed in valleys adjacent to the mine. The studies in the draft EIS do not provide sufficient scientific evidence to conclude that these mining methods are unacceptable and as such, the proposed alternatives do not recommend eliminating this type mining. The draft EIS has however, identified a number of ways that the adverse environmental effects of mountaintop mining / valley fills can be lessened. The proposed alternatives include recommendations such as integrated environmental reviews by the SMCRA and CWA agencies, more complete data collection and analysis, and other actions that will result in projects designed with less adverse environmental impacts. Chapter II and Chapter IV of the draft document provide much greater detail on the proposed alternatives and their impacts.

Q3: How can the public provide input on this draft EIS?

A3: The public may provide written comments to Mr. John Forren, U.S. EPA (3ES30), 1650 Arch Street, Philadelphia, PA 19103 through the close of the comment period on August 29, 2003. In addition, two public hearings will be held (one in Hazard, Kentucky on July 22, 2003 and one in Charleston West Virginia on July 24, 2003) when oral and written comments will be accepted. Oral comments at the public hearings will be limited to 5 minutes in length. The draft EIS is located on the EPA Region III website at http://www.epa.gov/region3/mtntop/index.htm

Q4: Is this EIS consistent with the National Environmental Policy Act (NEPA) requirements?

A4: Yes. This EIS is fully consistent with NEPA in that it evaluates a range of alternatives that fulfill the stated purpose and need of the EIS. Based on public scoping, the agencies initially evaluated over 100 actions that were reduced to 17 actions that were evaluated and incorporated into the action alternatives. Also, it fulfills the commitments of the agencies under the settlement agreement to identify actions to minimize adverse environmental impacts associated with surface coal mining operations.

Q5: What distinguishes NEPA from other environmental laws?

A5: NEPA sets forth a process designed to ensure that environmental information is available to public officials and citizens before decisions are made. Actions taken NEPA are substantially different from other environmental laws because it does not manage, regulate, or protect a particular resource as is required under the Endangered Species Act, Clean Water Act, or Clean Air Act.

Q6: How does the NEPA process influence this EIS and decision-making about how best to regulate mountaintop mining and valley fills?

A6: As a programmatic document, this draft EIS includes scientific and technical information that will facilitate a better informed, more coordinated and efficient decision-making process. Public involvement is being sought and public comments will be considered in the final EIS. The information in this EIS, and the programmatic process improvements that it proposes, will result in more environmentally sound permitting decisions on future MTM/VF operations.

Q7: Is this draft EIS the final word on regulating MTM/VF operations?

A7: No. This draft EIS is only one component of a regulatory improvement process that is underway and will continue into the future. This draft document is part of a process leading to a final EIS and a Record or Records of Decision. The agencies have already implemented a number of programmatic improvements, while other actions are proposed for the future. Some specific actions envisioned in this EIS such as rulemaking, may also require additional NEPA work before being implemented. Additional NEPA review will be done on a project-specific basis.

Q8: What is the difference between a “programmatic” and a “project-specific” EIS?

A8: The alternatives for a programmatic EIS are based on changes to existing programs or development of new programs on a broad scale. The alternatives for a project-specific EIS, on the other hand, may include different site selections, different project designs or sizes or other changes for a specific project. For example, the purpose and need for a project-specific EIS may be construction of a specific mine project, residential development or highway project. Evaluation of each of these projects includes a range of alternatives that may include: no project, larger or smaller project sizes or changes to the project alignment or project site location.

Q9: The agencies committed in their 1998 settlement to complete the EIS in two years; why has the EIS taken so long to prepare?

A9: Mountaintop mining is a complex issue and is regulated under the SMCRA as well as Sections 401, 402 and 404 of the CWA. At the beginning of the EIS process, the agencies funded over 30 technical studies to answer questions on the environmental effects of MTM/VF operations. These studies, along with programmatic reviews by the agencies, have resulted in a very large and complicated document. It has taken the agencies some time to put all of this information in an understandable form.

Since the agencies agreed to prepare this EIS in December 1998, a number of program changes or improvements have occurred both on the regional and state levels. For example, under the CWA, the Corps reauthorized all of the nationwide permits (NWP) including NWP 21 authorizing surface mining projects receiving SMCRA permits. However, when this permit was reauthorized in 2002, new conditions were added. These conditions included the need for case-by-case evaluations, individual and cumulative impact analyses and adequate compensatory mitigation. In addition, the Corps has developed a "stream assessment protocol" which better enables agencies to identify, protect, and/or require mitigation for any impacts to waters of the U.S. Under SMCRA, the Office of Surface Mining (OSM) has provided additional guidance to the state regulatory agencies on the issue of post-mining land use and has, in cooperation with the states, initiated efforts to promote the use of trees and improve forest productivity in the post-mine environment. The states have developed methods to better assure minimization of excess spoil and for predicting and controlling peak flow discharges from mine sites.

Q10: Why does this version of the draft EIS appear to move away from absolute restrictions on mining, unlike the previous version?

A10: As part of the deliberative process, the agencies considered two ways to restrict the size of valley fills in waters of the U.S. One way considered limiting valley fill placement by stream segment (ephemeral, intermittent or perennial). The other method restricted fills by watershed size (35, 75, 150, 250 acres).

We considered revising the SMCRA stream buffer zone to implement these absolute restrictions, but there is no statutory basis for such an absolute restriction nor is there a basis in the CWA. In addition, imposing a restriction using the stream buffer zone would, in fact, supercede a legitimate activity allowed under the CWA Section 404 program.

These two ways of restricting fills were based on an assumption that smaller fills confined to stream segments in the upper reaches of watersheds would have less adverse aquatic impacts than larger fills. We found insufficient scientific or technical bases for support of this assumption. The data indicate that the direct effects of a large fill are different from a smaller fill, but it appears the indirect effect downstream may be similar, regardless of size. The overall aquatic impacts attributable to fills are highly site-dependent and a “one-size-fits-all” fill restriction standard is not justified at this time.

Because existing data do not establish a sound scientific basis for "one-size-fits-all" restrictions, limiting fills to specific stream segments or watershed sizes, this EIS proposes to continue individual, site-specific data collection and study. This data collection and study effort would be designed to further evaluate the ecological importance of upper stream reaches, determine if scientifically valid causal relationships can be established for impacts detected in watersheds that include MTM/VF activities, and determine the feasibility of establishing cumulative and individual impact thresholds restricting valley fills based on stream segment, watershed size, quality of the aquatic resource or other characteristics.

A more detailed discussion of the alternatives considered but ultimately not carried forward as "reasonable" alternatives in this draft EIS may be found in Chapter II.D. of the document.

Q11: Is the EIS recommending that OSM eliminate the 'stream buffer zone' rule?

A11: No. The draft EIS simply acknowledges as part of the No Action Alternative that OSM has initiated rulemaking to eliminate confusion regarding the current buffer zone rule and to clarify the conditions in which the SMCRA regulatory authority may allow mining activities within the stream buffer zone. As a part of this rulemaking, OSM will also affirm its commitment and SMCRA's mandate that coal companies must design and construct fills to minimize adverse environmental effects by reducing the volume of excess spoil material, reducing the size and/or number of fills, and placing fills in a manner and in locations that will cause the least environmental harm.

Q12: Has the 250-acre threshold for NWP 21 been eliminated?

A12: The 250-acre threshold for NWP 21 remains in effect in West Virginia under the settlement agreement until the final EIS is published. This is described in the document under the No Action Alternative discussion of regional conditions. Regional conditions are added to nationwide permits by districts and remain in effect until modified or revoked or the nationwide permit expires. The preferred alternative states that any regional conditions implemented in the No Action Alternative will remain in effect if this alternative is chosen in the final EIS.

In a specified geographic area (West Virginia and Ohio), the 250-acre threshold will be proposed as a regional condition by the Huntington District as a general administrative tool for the application of NWP 21. This regional condition does not prohibit fills beyond this point in the watershed, but requires a different type of permit processing. Individual permits may be required for smaller fills based on a quality evaluation and larger fills may be authorized using NWP 21, if appropriate.

Q13: Please describe the key recommendations for ensuring more effective protection for human health and the environment.

A13: Many of the proposed actions described in this draft EIS include programmatic changes to identify site-specific and cumulative watershed impacts of MTM/VF on water and air quality, reforestation, wildlife populations, and

flooding. There are four Best Management Practice actions proposed to develop and utilize the best scientific information for activities such as reforestation and stream channel restoration. The alternatives all require that mining companies demonstrate that they have minimized excess spoil material. Mitigation for unavoidable aquatic impacts is now required for all mine projects affecting waters of the U.S. Other actions proposed in this draft EIS include requirements of more detailed mine planning, reclamation, operations that are designed to minimize adverse environmental effects, extensive base line data collection and predictive impact and alternatives analyses.

Q14: How would you describe the differences that implementation of these recommendations will make?

A14: This draft EIS proposes to better coordinate the expertise of the various agencies including engineering, wetland and stream design/construction, and restoration of riparian and terrestrial habitats. By increased cooperation of the agencies, better-informed decisions can be made to minimize the environmental impacts starting at an early stage in the process of proposed coal mining projects. With improved data collection and analysis from many different state and Federal agencies, the individual and cumulative effects of these projects will be evaluated as part of the permit decision-making. In addition, a coordinated permit process will reduce paperwork and provide early agency input and predictability for mine applicants and other stakeholders.

Q15: Why does the draft EIS stress government efficiencies over specific actions with regard to mountaintop mining/ valley fills?

A15: With the additional guidance and rule making proposed by the EIS, the agencies current regulations provide for enhanced environmental protection. By utilizing better data and wider agency expertise, the agencies will improve permit decisions and reduce environmental impacts. The agencies are committed to working together to coordinate decision-making and reduce environmental impacts of MTM/VF. Actions proposed by this draft EIS will not relax environmental standards. By implementing the various actions proposed within the identified preferred alternative such as requiring compensatory mitigation and evaluating site-specific information, the agencies will continue to reduce the adverse environmental impacts associated with MTM / VF activities.

Q16: What reassurances can you offer that this approach is better than one that calls for specific actions?

A16: This draft EIS proposes specific actions to minimize the environmental effects of MTM/VF. However, at this time, the technical and scientific information is insufficient to designate specific thresholds for valley fill sizes. A more comprehensive database of information, including water quality data from NPDES permits, stream quality evaluations, and wildlife data, may eventually lead to specific thresholds. Because site-specific information is critical to the permit evaluation, a stream functional assessment protocol is the appropriate tool to use for making permit decisions, rather than limitations on fill size. This is because high quality streams may exist high in the watershed and lower quality streams may exist in the lower portions of the watershed. The requirement of

avoidance and minimization of valley fills as well as the need for compensatory mitigation will also reduce impacts to waters of the U.S. The general 250-acre threshold is proposed as a regional condition in West Virginia and Ohio and this regional condition is included both in the No Action and preferred alternatives described as “regional conditions in specific geographic areas”.

Q17: Economic studies done during preparation of this draft EIS suggest that limits on the size of fills would have only minimal economic consequences on coal and electricity prices. Since smaller fills would appear to coincide with reduced environmental impacts, why are they not included?

A17: The economic studies for this draft EIS were designed to evaluate the impacts of different size fills on a broad scale. However, these studies did not take into account the site-specific engineering requirements for mine development and other factors that affect the viability of a mine. Therefore, the interpretation that smaller fills have only minimal economic effects cannot be made from the existing economic studies. While it may appear that smaller fills would coincide with reduced impacts, this is not always the case. In the Louisville District example from Chapter IV of the draft EIS, the Corps utilized a “stream assessment protocol” to change the fills associated with a mine plan from several high quality small watershed streams to one larger, lower quality watershed stream. Situations such as this support the use of a system such as the stream assessment protocol for making case-by-case decisions to select the most environmentally protective, practicable alternative for the placement and size of valley fills.

Q18: What additional requirements are proposed to be placed on mining companies?

A18: Mining companies are required to demonstrate that they have minimized the amount of excess spoil material on each mine site. In addition, as part of the proposed actions envisioned by the draft EIS, companies would be providing environmental information for each stream that may be impacted by their project. The additional information may include factors such as water quality data, identification of species in the fill area and other stream quality factors. Currently under the CWA Section 404(b)(1) guidelines, fills in waters of the U.S. must be avoided and minimized to the maximum extent practicable and, for those fills still required for projects, compensatory mitigation is usually required.

The coordinated permit process and joint application form proposed as part of the preferred alternative would provide mine companies with early agency input and more efficient government responsiveness. This would result in reduced costs to the companies in the form of less engineering requirements for the redesign of projects based on sequential permit processing.

Q19: What is the important message of this draft EIS?

A19: The agencies are committed to working together to coordinate decision-making and reduce environmental impacts of MTM/VF. By striking a balance between protection of the environment and the nation’s need for coal as an essential source of energy, the agencies believe that projects may continue to be permitted in accordance with existing environmental laws.