

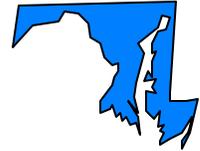


**OFFICE OF SURFACE MINING
OVERSIGHT & INSPECTION BRANCH
NEWSLETTER
MAY 2002**



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**U.S. DISTRICT COURT RULES ON
SMCRA 522(E) PROHIBITIONS**

Judge James Robertson of The U.S. District Court for the District of Columbia ruled on March 27, 2002, on the question of whether SMCRA prohibits subsidence and underground mining activities that may cause subsidence within the prohibited areas identified in section 522(e). The prohibited areas primarily include areas:

- within the boundaries of the National Park System
- on Federal Lands within National Forests;
- areas that will adversely affect public parks or places included in the National Register of Historic Places
- within 100 feet of a public road or cemetery;
- within 300 feet of an occupied dwelling, unless waived by the owner;
- within 300 feet of any public building, school, church, community, or institutional building, or public park.

There are exceptions to some of these prohibitions.

OSM adopted an interpretive rule in December 1999, at 30 CFR 761.200, stating that:

Subsidence due to underground mining is not included in the definition of surface coal mining operations under section 701(28) of the Act and 700.5 of this chapter and therefore is not prohibited in areas protected under section 522(e) of the Act.

The Citizens Coal Council challenged the rule. Judge Robertson ruled that the definition of "surface coal mining operations" includes surface effects from underground mining, including subsidence. Therefore, the prohibitions of 522(e) apply to the surface effects caused from underground mine

subsidence. The Judge granted the plaintiff's (Citizens Coal Council) motion for summary judgment and denied the defendants' (Department of the Interior and National Mining Association) cross motions for summary judgment. An appeal of this decision is expected.

If you would like a copy of the decision, contact our Columbus office at 614-866-0578.

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**HUFF RUN WATERSHED RESTORATION
PARTNERSHIP INC.
HOLDS GROUNDBREAKING CEREMONY**

On April 8, 2002 the Huff Run Watershed Restoration Partnership (HRWRP) held a groundbreaking ceremony for the Farr Tipple Acid Mine Drainage (AMD) Project.



Pictured from left to right are: Chuck Howell of Tucson Excav., Bill McDonnell of Tuscarawas Soil & Water District, Max Luehrs of OSM/Columbus, Ed Taggart, President of HRWRP, Jim Gue of DMRM, and Bill Brug of Tuscarawas Soil & Water District.

This project will treat AMD from an abandoned deep mine just south of Mineral City, Ohio in Tuscarawas County.



An anoxic limestone drain (ALD) will be constructed where the AMD flows out of the old entry to raise the pH of the discharge. ALD's are constructed to exclude air from contacting the limestone so that it can dissolve without becoming coated with metal precipitates. The water will then be routed through a series of three wetland cells. These cells are actually small ponds that capture the metal precipitates before flowing into Huff Run. Water samples taken in 1998 and 1999 show an average flow of 38 gallons per minute of AMD discharging from this site at an average pH of 4.1 and an average iron content of 50.75 milligrams per liter.

The Ohio Division of Mineral Resources Management (DMRM) has done several projects within the Huff Run watershed in the past. However, this is the first project to specifically improve water quality, and the first done in partnership with the HRWRP and other agencies. Cravat Coal Company is the primary contractor for the project, which was bid at \$115,916. Of that amount, \$79,916 is being funded through the Appalachian Cleans Streams Initiative (ACSI) portion of DMRM's annual Abandoned Mine Land (AML) grant, and the remaining \$36,000 is being funded through an Ohio EPA 319 (Non-point pollution abatement) grant. The Farr Tipple AMD Project, completed in March 2000, is one of eight project sites identified in the Huff Run Acid Mine Drainage Abatement and Treatment Plan (AMDAT). In addition to working with DMRM and Ohio EPA, the HRWRP has also applied directly to OSM for two watershed cooperative agreements. The Farr Tipple AMD Project is the first of many more projects to come as a result of the HRWRP.

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**MARCH 4, 2002, REPORT ON OCTOBER 2000
BREAKTHROUGH AT THE BIG BRANCH SLURRY
IMPOUNDMENT**

On October 11, 2000, an estimated 306 million gallons of water and coal slurry drained from Martin County Coal Corporation's Big Branch impoundment into an adjacent underground mine. Approximately 245 million gallons of the water and coal slurry discharged from the underground mine and entered nearby watersheds. No personal injuries were reported, but the slurry affected over 75 miles of streams in Kentucky and West Virginia, with the spill reaching as far as the Ohio River. This was the second major breakthrough event at this impoundment, the first having occurred in May 1994.

As a result of several breakthroughs over the last few years, including some in Virginia, the Office of Surface Mining developed a plan to ensure that impoundment breakthroughs into underground mines do not occur in the future. If you would like a copy of this report, you can either call our office or go to OSM's website at <http://www.osm.gov/rep.htm>.

**MARYLAND EARTH DAY
ACTIVITIES**

Pete Hartman, of the Office of Surface Mining, Oversight and Inspection Office, participated in the Earth Day Community Fair in Frostburg, Maryland on Saturday, April 27, 2002.



OSM joined the Maryland Department of the Environment, Bureau of Mines, to share information about the Appalachian Clean Streams Initiative and about the activities of both the Bureau of Mines and OSM.

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U.S. DISTRICT COURT DECISION REGARDING WEST VIRGINIA BONDING PROGRAM

On March 18, 2002, Judge Charles Haden of the U.S. District Court, Southern District of West Virginia, ruled on several motions from the West Virginia Highlands Conservancy (WVHC) and the West Virginia Coal Association (WVCA) regarding WV's alternative bonding system (ABS) and other required program amendments.

In June 2001, WVHC requested partial summary judgment and a permanent injunction against OSM for delaying mandatory enforcement action concerning the WV ABS. WVHC asked the court to order OSM to implement a federal program for WV or withdraw approval of the state program and begin proceedings under 30 CFR Part 733 or 736. OSM initiated part 733 proceedings on June 29, 2001. WVHC also complained that WV had not submitted 16 additional OSM required program amendments and that OSM had delayed action on nine other amendments WV had submitted. WVHC contends that OSM is under a mandatory time to act under Part 733 if required amendments are not filed within 60 days after notification.

The Court previously found that OSM's ten-year delay between finding the WV ABS inadequate and starting proceedings to withdraw program approval was unreasonable. However, the court did not issue a permanent injunction because of OSM's proposed schedule to prevent the Part 733 proceedings. The schedule included specific deadlines for WV to submit proposed changes to the ABS and for OSM to complete its review. In addition, OSM committed to strict timeframes for reviewing and issuing its final decision on 25 required WV program amendments.

OSM approved changes to WV's ABS that permanently increased the tonnage tax on coal from three cents to seven cents. Additionally, for a period not to exceed 39 months, an additional tax of seven cents per ton is levied. The legislation also created an advisory council to study and report annually to the governor whether any adjustments to the tax should be made. OSM's approval of the changes deferred determining if the changes would eliminate the ABS deficit pending additional review, including a request for public comment. The OSM Director promised that OSM would complete its review no later than May 28, 2002. If the changes to the WV ABS do not fully resolve the required amendment, OSM will immediately take action on the WV ABS under Part 733 provisions.

Judge Haden denied motions filed by WVCA for dismissal due to lack of jurisdiction and review under the Administrative Procedures Act. Judge Haden also denied WVHC's request for summary judgment and found moot their request for injunctive relief regarding OSM's action on WV's ABS. He determined that OSM's commitments and schedule for review and decisions on the adequacy of WV's ABS were reasonable. Judge Haden ruled that WV has submitted the required program amendments. He further ruled that OSM has provided a reasonable schedule to conclude its review of all required amendments by May 1, 2001, and to initiate action under Part 733 by May 15, 2002, if the required amendments are not satisfied. Therefore, considering the schedule, the motions regarding the required amendments were denied. OSM published its decision on WV's required amendments in the Federal Register on May 1, 2002.

The Judge further stated: "Although the court has not granted injunctive relief requested by the Conservancy, it will hold the Federal Defendants to their promises and enforce these dates."

Copies of the 30-page decision are available from the OSM Columbus Office or the OSM website at www.osmre.gov/bondingindex.htm.

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U.S. DISTRICT COURT DECISION ON EXCESS SPOIL FILLS

On May 8, 2002, Judge Charles Haden of the U.S. District Court, Southern District of West Virginia, issued a decision on a case between Kentuckians for the Commonwealth, Inc. and the U.S. Army Corps of Engineers, Huntington District. The case involves the disposal of spoil material in streams as a result of mountaintop mining. Judge Haden ruled that section 404 of the Clean Water Act does not allow filling the waters of the United States solely for waste disposal. The decision indicates that excess mine spoil is considered waste material. He also ruled that recent agency rulemaking proposed by the Corps of Engineers and EPA to allow disposal of mine waste material in streams is beyond agency authority provided by the Clean Water Act. He stated: "Only the United States Congress can rewrite the Act to allow fills with no purpose or use but the deposit of waste."

A copy of this 46-page decision is available from the Columbus Office or the District court's website at www.wvsc.uscourts.gov/opinions/index.cfm.