

WVRC refutes Coal Association claims

West Virginia Rivers Coalition (WVRC) accepted an invitation to make a presentation in front of the Coal Surface Mining Interim Legislative Committee at their July meeting in Parkersburg. The Committee is tasked with reviewing the “need and feasibility of existing... rules, policies... and programs that may be more stringent than corresponding” federal rules. The Interim Committee’s purpose is a result of the 2003 regular legislative session’s Committee on Energy, Industry and Mining response to the West Virginia Coal Association’s packet of amendments, their concern that the regulatory process is too slow and the Association’s request that West Virginia’s Department of Environmental Protection (DEP) review policies to make sure that federal requirements are not exceeded.

Presenting for WVRC were Liz Garland, Evan Hansen and consultant Rick Eades. The effort was coordinated by WVRC Board members Margaret Janes and Don Garvin, executive director Jeremy Muller, and West Virginia Highlands Conservancy’s Cindy Rank. The presentation was well received by the traditionally pro-coal committee. And, the committee has requested that the Coal Association prepare a response.

WVRC presented some general background on the intent of the laws and regulations that govern coal activity in West Virginia. The following three points summarize that discussion:

□ State-specific protections have been passed by the West Virginia Legislature. And, the coal industry has worked with the legislature on the promulgation of mining regulations. Ultimately these rules and policies are approved by the Office of Surface Mining as being in compliance with federal requirements. Therefore, in reality West Virginia regulations are no more stringent simply because they are approved by OSM.

□ The Office of Surface Mining may approve measures, adopted by the state, which are more stringent than federal guidance. Furthermore, neither state nor federal mining laws may supercede the protections established in the federal Clean Water Act. Coal permits in West Virginia must meet water quality standards, which are similarly promulgated by the state, approved by the federal Environmental Protection Agency, and are required to be at least as stringent as federal guidance.

□ Therefore, it is perfectly acceptable for WV regulation to be more stringent than federal guidance. Historically, West Virginians have placed high value on the importance and quality of our rivers and streams. They are among our most valuable resources and therefore should receive the highest possible protections in order that we protect our economic, human health and environmental interests, as well as those of our downstream neighbors.

Specifically, WVRC refuted each of the line items the Coal Association had submitted to the Committee as too stringent. These include the following protections related to the NPDES permitting process of the Clean Water Act (CWA):

1. Antidegradation. Antidegradation protections are required by the federal CWA and were developed with the coal industry’s input to the West Virginia Legislature. Implementation is rarely costly and applies to very few mine operations. Further, the Tier 2.5, or high quality, designations were established for streams because of industry’s interest in easing antidegradation requirements. Tier 2.5 provides relief to industry by classifying hundreds of streams as Tier 2.5, rather than the more protective Tier 3.

2. Category A. Federal law requires that Category A uses, drinking water supplies, be protected. DEP considers all waters in West Virginia as eligible for drinking water protections because of the state’s rural nature and it’s exceptional water quality. West Virginia’s Environmental Quality Board (EQB) recently approved accelerated exemption procedures for industry’s benefit. The Coal Association did not support EQB’s proposal.

3. Water Quality Parameter Limits. Discharge limits for pollution permits are guided by state water quality standards and applied in accordance with CWA regulations. Limits are not

more stringent than federal requirements instead they meet the fundamental requirement of permitting pollution only at levels that protect receiving streams.

WVRC also discussed a number of policies, rules and regulations that are a part of federal mining law or West Virginia's mining law. Each of these is alleged by the Coal Association to be too stringent. These include the rules for Approximate Original Contour (AOC) and for Contemporaneous Reclamation and Post-Land Use Mining, which were developed with extensive input by the coal industry, approved by the legislature, and carry the federal seal of approval by the Office of Surface Mining (OSM).

Mining laws objected to by the Coal Association also include the Surface Water Runoff Policy, Flood Routing Analysis and Valley Fill Construction rules. These rules also carry legislative and OSM approval and were developed in response to flooding problems in coal field communities. In particular, the valley fill construction methods are a specific compromise proposed by the coal industry.

Additionally, WVRC listed a handful of items that are less stringent than federal law and need to be strengthened to meet federal standards and protect West Virginia's waters. These items, the committee was told, are presently less protective than federal standards and thus, need to be strengthened:

1. Instream treatment ponds and instream treatments below valley fills violate the CWA. A stream cannot be used for a primary purpose of waste disposal.
 2. Discharge limits in coal NPDES permits do not always comply with state water quality standards, especially for trout streams, as required by the CWA.
 3. Harmful selenium discharges by the coal industry do not meet minimal federal standards.
- Interim meetings for the remainder of the year will hear a rebuttal by the Coal Association, a presentation on the efficiency of the permitting process by DEP and an overview of rulemaking history by the Appalachian Center for the Economy and the Environment. Recommendations by the Committee will be presented to the 2004 legislature and West Virginia Rivers Coalition can only hope that the Committee understands the importance of continuing to strengthen the regulations that protect our waters in the coal fields and across the state.