

State to monitor valley fills as before Change in rules

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Byline: BRIAN BOWLING

DAILY MAIL STAFF A Bush administration proposal that environmentalists claim would legalize valley fills wouldn't affect the state Department of Environmental Protection's regulation of the process, a state official said.

Environmental Protection Secretary **Mike Callaghan** said the valley fill ruckus is mainly a federal issue.

"It's been DEP's position interpreting the rules all along that it's a lawful process and a lawful practice," he said.

Under the federal Clean Water Act, the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers are responsible for regulating the placement of any material in a stream or lake.

Under EPA regulations, a material defined as "fill" can go in a stream or lake while a material defined as "waste" can't. The EPA considers the rock and dirt dumped into adjacent valleys by the mountaintop removal mining process to be fill and, therefore, something can legally be dumped there.

The Corps' definition, however, is more ambiguous and, in two separate lawsuits, environmentalists have claimed that the regulation should be interpreted to classify the mining debris as "waste" that can't be dumped into intermittent or perennial streams.

The Bush administration proposal would apparently end the debate by changing the Corps' definition to match the EPA's definition.

Greg Peck, deputy director of the U.S. Environmental Protection Agency's wetlands program, said changing the Corps' regulation to match EPA's regulation would reflect the way both agencies have enforced the 1977 Surface Mining Control and Reclamation Act.

"The goal here is to come up with a single definition of the term 'fill material' that both the Corps and EPA would apply, and the result is that we're adopting EPA's approach - an approach that has been in place since 1977," he said.

The EPA plans to publicly release the proposed regulation within the next month.

Bill Raney, president of the West Virginia Coal Association, said he hopes the administration proposal would put to rest some of the lawsuits environmentalists have brought against the industry.

"It's not going to change anything because what it defines as 'waste' in a valley fill situation is dirt and rock, the same dirt and rock that's used in highway construction, economic development construction and residential construction," he said.

Ben Stout, an aquatic ecologist from Wheeling Jesuit University, said there is a significant difference.

"These are not fills we're talking about; they are dumps. There is no preparation for construction and development that would make these dumps suitable building sites," he said.

Consequently, the administration proposal will have negative economic consequences for the state by creating "vast wastelands unsuitable for development," Stout said.

Callaghan said his perspective on the issue is as a law enforcement official. The federal regulations governing the issue include about 30 pages detailing how to place a valley fill in a stream and a few sentences saying nothing should be placed in a stream, he said.

"(Environmental lawsuits) say the two sentences apply and you can't do it. We say the 30 pages apply," he said.

Whether he thinks valley fills are good or bad is irrelevant, Callaghan added.

"If Congress comes in and says, 'Thou shalt not do mountaintop mining,' I'm going to be the first person out there enforcing it," he said.

Writer Brian Bowling can be reached at 348-4842 or by e-mail at brianbowling@dailymail.com.