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EPA Review Finds 274 Valley Fill Violations

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Nearly 275 mining operations may have buried streams without the proper Clean Water Act permits, government regulators found in a preliminary review.

Bush administration officials outlined that estimate in April, when various agencies met to review plans to greatly reduce fines for the permit violations, records show.

Industry representatives vigorously disputed the figure, and government officials said the number might drop after further investigation.

Later this fall, the U.S. Environmental Protection Agency plans to formally announce its "Mountaintop Mining Self-reporting Program." Under the program, companies that voluntarily admit their violations could continue to operate and pay lesser fines.

Last week, EPA lawyer Robert Klepp outlined the

agency's proposed plan to coal industry officials during a workshop in Charleston.

On Thursday, industry officials praised the EPA proposal for lesser fines. They said companies were confused about changes in the permit process.

At the same time, industry officials said that coal companies had not violated any permit requirements.

"We don't know what evidence they have that there is filling being done without permits," said Karen Bennett, director of water quality for the National Mining Association.

Historically, the U.S. Army Corps of Engineers has authorized valley fills through "dredge-and-fill" permits under Section 404 of the federal Clean Water Act.

In separate rulings in October 1999 and May 2002, U.S. District Judge Charles H. Haden II found that mining fills were composed of

"waste" that he concluded was not eligible for Section 404 permits.

In January 2003, the 4th Circuit Court of Appeals overturned Haden.

In the meantime, EPA officials found, some coal operators continued to bury streams under expired fill permits.

Other companies did not seek renewal of their fill permits when they expired in February 2003, EPA found. In an April 17 memo, government officials said that fill permit violations were "a longstanding problem due to remoteness, lack of data, insufficient staff and resources, reluctance to shut down operations, etc."

The memo was obtained through a public records request by Trial Lawyers for Public Justice, a public interest law firm that represented citizens in mountaintop removal litigation.

"Faced with massive non-compliance with the new per-

mitting requirements, the corps' response is to beg the violators to comply and to promise leniency, rather than to take strong enforcement action that will stop and deter violations," said Jim Hecker, environmental enforcement director for the group. "This is another glaring example of how the coal industry gets a sweetheart deal from the Bush administration."

The government memo cited initial estimates of 150 violations in West Virginia, 70 in Kentucky and 54 in Ohio.

"They all are based on some pretty reckless methodologies that could wildly over-estimate the noncompliance," Bennett said. "It's very likely overstated."

In an interview last week, Klepp said that EPA made initial estimates by comparing records of strip mining permits with those of corps' "dredge-and-fill" authorizations. EPA found many operations that obtained mining permits, but never got corps' fill approval, he said.

Klepp said that investigators were now looking more

closely to refine their estimates. The numbers had not been updated yet, he said.

"We really don't know," Klepp said. "Our universe is unknown and undefined."

Generally, the corps has approved valley fills through "nationwide" permits. Under nationwide permits, companies submit information to show that they will comply with a set of general environmental protection guidelines.

In January 2002, the corps rewrote the guidelines for the nationwide permit, called Nationwide 21, which applies to strip mining.

Among other things, the corps began to require more information about stream damage and started to force companies to compensate the government for the loss of streams buried by fills. Industry officials did not like the new guidelines. They complained that the corps required too much information, and that new compensation rules would cost too much.

When it rewrote the permit guidelines in January 2002,

the corps specifically said that the old permits were good only through Feb. 11, 2003.

That gave operators a year to finish their valley fills, or seek approval under the new permit rules.

In December 2002, the corps issued a public notice to warn the industry of the impending Feb. 11 deadline.

A month later, when they sought an expedited ruling on their appeal of Haden's ruling, corps lawyers noted that mining companies would need to renew their permits.

As part of its motion, the corps included an affidavit in which Bill Raney, president of the West Virginia Coal Association, said he knew that operators would need new permits after Feb. 11, 2003.

In May 2003 and again in June, the corps issued public notices that urged coal companies to seek permits under the new guidelines.

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