Lawsuit Challenges Coal Mining Permits

By Ken Ward Jr.
STAFF WRITER

Lawyers for three environmental groups on Thursday kicked off a major new legal effort to try to limit mountaintop removal coal mining.

The lawyers allege that hundreds of miles of Appalachian streams are being buried under a streamlined permit process, which is intended only for activities that cause “minimal” environmental damage.

In a federal court lawsuit, the lawyers seek to block the U.S. Army Corps of Engineers from approving valley fills through federal Clean Water Act “nationwide” or “general” permit authorizations.

They say coal operators should have to get individual permits, which require much more rigorous environmental review.

Because mountaintop removal “will result in the destruction of hundreds of miles of streams, and hundreds of thousands of acres of forests, the adverse effects are necessarily more than minimal,” the complaint states.

The complaint was filed Thursday afternoon in U.S. District Court in Charleston on behalf of the Huntington-based Ohio Valley Environmental Coalition, Coal River Mountain Watch in Whitesville and the Natural Resources Defense Council in Washington, D.C. It has not been assigned to a judge.

The groups are represented by lawyers Joe Lovett and John Barrett of the Appalachian Center for the Economy and the Environment and Jim Hecker of Trial Lawyers for Public Justice.

“It is unfortunate that citizens must resort to litigation to force the Bush administration to enforce environmental protection laws passed by Congress more than 25 years ago,” Lovett said. “The administration’s collusion with coal operators to undermine the enforcement of these crucial laws, if allowed to continue, will not only destroy the region’s forests, streams and mountains, but also its economic future.”

Named as defendants in the case were Lt. Gen. Robert B. Flowers, chief of the corps, and Col. William Bulen, the agency’s Huntington district engineer.

David Hewitt, a spokesman with the corps’ Washington, D.C., headquarters, declined comment on the suit. So did Steve Rusak, a Department of Justice lawyer who represents the corps.

Bill Raney, president of the West Virginia Coal Association, said that he had not yet seen the lawsuit.

In the last four years, U.S. District Judge Charles H. Haden II has issued two rulings to curb mountaintop removal.

One ruling said that a stream “buffer zone” rule prohibited
valley fills. Another said that waste rock and dirt from mining did not fit the definition of “fill material” allowed under corps permits.

Both decisions were overturned by the 4th U.S. Circuit Court of Appeals in Richmond, Va.

The central issue in the new case was raised in the first mountaintop removal case filed in July 1998 by the West Virginia Highlands Conservancy. That part of the case was settled, however, and Haden never ruled on it.

Under the Clean Water Act, the corps can approve permits to allow the discharge of dredged or fill material into rivers and streams.

The corps can issue two types of permits: individual permits and nationwide, or general, permits.

Individual permits cover specific activities and require a detailed review of the project’s environmental impact.

Nationwide permits cover categories of similar activities. The corps spells out the general conditions that a particular category of activity should meet. Then, companies seek authorization for specific projects. If they promise to meet the general conditions, their projects are authorized with much less review than individual permits.

Nationwide permits are intended to speed up approval of activities that will have only minimal environmental effects.

In mountaintop removal, coal operators blast off entire hilltops to uncover valuable, low-sulfur coal reserves. Leftover rock and dirt is dumped into nearby valleys, burying streams. The resulting waste piles — sometimes miles long and hundreds of feet deep — are called valley fills.

Historically, the corps has approved mountaintop removal valley fills through authorizations issued under a nationwide permit called Nationwide 21.

In 2000 alone, the corps authorized 264 mining projects under Nationwide 21, according to agency records. Those projects buried more than 87 miles of streams, the records show.

As a part of their new lawsuit, environmental groups filed a list of dozens of valley fill authorizations that have been or are expected to be approved by the corps.

The list included nearly 64,000 acres of mining permits in a dozen West Virginia watersheds.

To contact staff writer Ken Ward Jr., use e-mail or call 348-1702.