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## U.S. Judge Curtails Valley Fills

### Environmentalists See Big Win in Fight Against Mountaintop Removal

**By Chris Wetterich**  
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Coal companies must undergo a more rigorous government review of the effects of mountaintop removal mining on waterways before they receive permits, a federal judge in West Virginia ruled Thursday.

U.S. District Judge Joseph R. Goodwin barred the U.S. Army Corps of Engineers from approving mining activities that affect waterways under a streamlined permit process.

Such permits are for activities that are supposed to have little environmental impact. They have routinely been approved by the Corps of Engineers for mountaintop removal mines.

Environmental lawyers argued that mountaintop removal permits should have to go through a more extensive permit process, because mountaintop removal impacts the environment significantly.

On Thursday, Goodwin agreed. He said nationwide permits cannot be issued for future mountaintop removal

permits, and the corps must revoke its permits for 11 mining sites affecting miles of Appalachian streams where construction has not started.

Environmentalists say the decision is a major victory in the fight to stop mountaintop removal. Joe Lovett, an attorney for the Ohio Valley Environmental Coalition, which filed the lawsuit, predicted that many coal companies will not get permits under the more meticulous process.

"Instead of rubber-stamping permits, the corps will have to pay heed to the science," Lovett said. "I'm not sure these permits can be approved, given what the environmental impact studies will show."

Attorneys for the corps and coal companies affected by the ruling could not be reached for comment Thursday.

Goodwin's ruling affects only the Southern District of West Virginia.

In mountaintop removal, coal companies 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.

The government has already spent millions on studies that show the damage of mountaintop removal mining but has ignored the science, Lovett said.

Currently, the corps has control over what happens in all U.S. waterways. When someone wants to undertake an activity that would affect a body of water, the corps has to give them a permit.

Congress authorizes the corps to issue two different kinds of permits. The first is a general permit for activity that would affect a body of water or wetland but cause "minimal adverse environmental effects."

With this type, Congress' intent was to reduce bureaucratic red tape and the workload of the corps. Once an activity is approved under the first permit, anyone wanting to engage in such an activity

can do it without getting permission from the government or undergoing an individual review.

The other type of permit is for specific activities where people or businesses want to discharge dredge or fill materials into U.S. waters. The corps must hold public hearings, give the public notice and allow enough time for interested parties to express their views. It also requires site-specific documentation and analysis of the project's environmental impact.

The case before Goodwin concerns Nationwide Permit 21. The corps has used it to authorize valley fills stemming from mountaintop removal.

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.

The Ohio Valley Environmental Coalition filed suit in October, claiming that the Nationwide 21 process is illegal. Goodwin concurred, saying that nationwide permit

process used by the corps violates the intent of Congress when it passed the Clean Water Act.

The law requires the corps to guarantee that an activity will have minimal impact before it issues a nationwide permit. In the case of Nationwide Permit 21, the corps doesn't do that. It sets up a process coal companies have to follow in order to make sure there is minimal impact, Goodwin wrote in his ruling.

The corps also doesn't determine whether the environmental impact is minimal until after the activity has taken place, Goodwin said. Nationwide permits are created for circumstances where there would never be a case where there was concern over possible serious environmental impact, the judge said.

Nationwide 21 also illegally requires an individual review of projects. This defeats the purpose of nationwide permits, which is to reduce the bureaucratic workload on the government and individuals, Goodwin wrote.

"The corps' procedural approach ... is unlawful," Goodwin wrote. "[T]he corps has defined neither a category of activities that will cause only minimal adverse effects nor a set of requirements and standards.

"If the corps cannot define a category of activities that will have minimal effects, absent individual review of each activity, the activities are inappropriate for general permitting."

The immediate result of the ruling is that coal companies will now have to seek individual permits from the corps for mountaintop removal because the corps can no longer issue permits under Nationwide 21.

Coal companies will also not be able to proceed with valley fills they have not started that have been approved under Nationwide 21. Those fills would have impacted over 26 miles of water in West Virginia: Green Valley, Horse Creek, Synergy, Hardway Branch, Phoenix, Fola, Westridge, West of Stollings, Edwight, Hewitt and Lexerd.

