



Mountaintop Mining: Background on Current Controversies

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Mountaintop removal mining involves removing the top of a mountain in order to recover the coal seams contained there. This practice occurs in six Appalachian states (Kentucky, West Virginia, Virginia, Tennessee, Pennsylvania, and Ohio). It creates an immense quantity of excess spoil (dirt and rock that previously composed the mountaintop), which is typically placed in valley fills on the sides of the former mountains, burying streams that flow through the valleys. Mountaintop mining is regulated under several laws, including the Clean Water Act (CWA) and the Surface Mining Control and Reclamation Act (SMCRA).

Critics say that, as a result of valley fills from mountaintop mining, stream water quality and the aquatic and wildlife habitat that streams support are destroyed by tons of rocks and dirt. The mining industry argues that mountaintop mining is essential to conducting surface coal mining in the Appalachian region and that it would not be economically feasible there if operators were barred from using valleys for the disposal of mining overburden. Critics have used litigation to challenge the practice. In a number of cases, environmental groups have been successful at the federal district court level in challenging permits for mountaintop mining projects, only to be later overturned on appeal. Nonetheless, the criticisms also have prompted some regulatory changes.

In 2009, officials of the Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (Corps), and the Department of the Interior signed a Memorandum of Understanding outlining a series of administrative actions under these laws to reduce the harmful environmental impacts of mountaintop mining and surface coal mining in Appalachia. The plan includes a series of near-term and longer-term actions that emphasize specific steps, improved coordination, and greater transparency of decisions to be implemented through regulatory proposals, guidance documents, and review of applications for permits to authorize surface coal mining operations in Appalachia. Viewed broadly, the Administration's combined actions on mountaintop mining displease both industry and environmental advocates. The additional scrutiny of permits and more stringent requirements have angered the coal industry and many of its supporters. Controversy also was generated by EPA's January 2011 veto of a CWA permit that had been issued by the Corps for a surface coal mining project in West Virginia. At the same time, while environmental groups support EPA's steps to restrict the practice, many favor tougher requirements or even total rejection of mountaintop mining in Appalachia. Federal courts have recently rejected several of the Administration's actions, including enhanced permit review procedures, and EPA guidance on factors used in evaluating water quality impacts of Appalachian surface mining permits. EPA's veto of the West Virginia mine permit was overturned by a federal court, but that ruling was recently reversed on appeal.

This report provides background on regulatory requirements, controversies and legal challenges to mountaintop mining, and recent Administration actions. Congressional interest in these issues also is discussed, including legislation in the 111th Congress seeking to restrict the practice of mountaintop mining and other legislation intended to block the Obama Administration's regulatory actions. Attention to EPA's veto of the West Virginia mining permit and other federal agency actions has increased in Congress. Bills have been introduced in the 113th Congress to clarify or restrict EPA's authority to veto CWA permits issued by the Corps (H.R. 524 and S. 830). Legislation to put a partial moratorium on mountaintop mining, pending health effects studies, also has been introduced (H.R. 526).

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