

US environment agency fights back over mountaintop mining

Courts set to decide on agency's power to protect wildlife and habitats.

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Surface mining in the Appalachian Mountains is polluting waterways and killing wildlife, says the Environmental Protection Agency.

The US Environmental Protection Agency is fighting tooth and nail to stop destructive mining practices that threaten the aquatic habitats and wildlife of the Appalachian Mountains of West Virginia. Wednesday is the deadline for the agency to submit legal arguments in its appeal against a decision that overturned its veto of a permit for a vast surfacing-mining operation in the area.

Mountaintop mining involves removing large amounts of earth with explosives to allow the excavation of thin seams of coal beneath them. Last year, the EPA vetoed a permit for one of the largest such projects ever planned in West Virginia.

The permit had been awarded in 2007 by the Army Corps of Engineers to Mingo Logan, a subsidiary of Arch Coal — the second-largest coal producer in the United States, which is based in St Louis, Missouri. The EPA concluded that the Spruce 1 mine would have "unacceptable" effects on water quality and wildlife (see ['EPA nixes mountain mining plans'](#)).

But in March this year, US district judge Amy Berman Jackson ruled that the EPA does not have the authority to veto a permit once it has been issued by the corps. She said such authority would be “a stunning power for an agency to arrogate to itself”. Environmentalists fear that the move seriously threatens the EPA’s powers to effectively safeguard the environment.

In July, another district judge overruled EPA guidance that recommended preserving water quality by putting limits on the allowable electrical conductivity of stream water, a property that is increased by the presence of mining debris in the water.

A united front

The EPA has joined with environmental advocates to combat the March decision. Environmental lawyers including the firm Earthjustice, based in San Francisco, California, will submit legal arguments in support of the EPA’s appeal, and oral arguments are expected to be heard by the end of the year.

The EPA announced in September that it will also appeal against the ruling on its water-pollution guidance.

The agency and Earthjustice argue that the law clearly gives the EPA the power to revoke permits. “We believe the court of appeal will apply administrative law and find that the EPA has authority and that its reading of the law is reasonable and permissible,” says Emma Cheuse, an attorney at Earthjustice.

The groups also argue that the scientific evidence “overwhelmingly demonstrates” the negative impacts of surface mining on sensitive habitats and wildlife including mayflies, fish and birds such as the Louisiana waterthrush (*Parkesia motacilla*). A surge of scientific studies published over the past three years strengthens the EPA’s case, demonstrating that mountaintop rubble dumped in valleys buries streams and causes toxic selenium and other metals to leak into the water^{1, 2, 3}.

“This widespread land-use change will generate a complex chemical mix. It is really clear the mixture from the surface coal mining is causing the problem and can be clearly tied to the loss of sensitive taxa,” says Emily Bernhardt, a biologist at Duke University in Durham, North Carolina, who has conducted some of the most detailed work in this area³.

Industrial opposition

But mining companies continue to question the scientific evidence.

In a legal brief submitted in March, Mingo Logan wrote that the impacts of mining on large invertebrates and salamanders are “utterly routine”. It also says that the effects on fish and the Louisiana waterthrush that were highlighted by the EPA are “speculative”.

Carol Raulston, a spokeswoman for the National Mining Association (NMA) in Washington DC, wrote in a statement that “based on analyses by outside experts retained by NMA, stream function (in this case the stream’s ability to provide sufficient food sources for fish, birds, etc.) is not altered by the mining activity”.

Judge Jackson did not rule on the scientific questions raised by Mingo Logan; the EPA and Earthjustice are hoping that the appeal court will do so, and will put an end to the doubt cast on evidence that they say is “solid”.

With the US presidential elections fast approaching there is little time to waste. “Mitt Romney has been candid about his feelings on environmental regulation — he wants to reduce the power of the EPA,” says Bernhardt. “I don’t see a Romney administration helping to put teeth into the EPA’s ability to protect the environment.”

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References

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