

NWP 21 Testimony
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Kentuckians For The Commonwealth is a statewide social, economic and environmental justice organization with many eastern Kentucky members directly impacted by coal mining. Since our first meeting in Hazard in 1981, KFTC has worked to protect the land and people from abuses of coal companies, including the 1988 campaign to give surface owners protections from the broad form deed.

Protecting our surface and ground water has been one of our priorities for nearly three decades. Having clean and safe water for our families, our communities and for economic development is an issue KFTC members care deeply about.

Therefore, KFTC welcomes and strongly supports the proposal to strengthen the permit process for coal mining valley fills so that our water resources will receive the protection they need and that coalfield residents and those downstream deserve. These proposals are the right thing to do. They are also a necessary and required step under the federal Clean Water Act.

The proposals are a belated acknowledgment by the Corps that NWP 21 is an inappropriate process for evaluating and permitting valley fills. The Clean Water Act states that the nationwide fast-track process is permissible only for projects that are determined to have “minimal adverse environmental effects.”

There is a large and growing body of scientific evidence that coal mining valley fills have significant harmful individual and cumulative effects on water quality and public health.

- The Kentucky Division of Water’s 305b and 303d reports have shown for years that 90% of the mountain region’s headwater streams are being damaged by resource extraction from surface mining.
- The 2002 federal *Environmental Impact Statement on Mountaintop Mining* found that valley fills increase the speed of rainwater runoff and contribute to increased water pollution.
- Federal and state studies have shown elevated and dangerous levels of conductivity and selenium in streams below valley fills.
- Still other agency and university studies show that the number one pollutant in eastern Kentucky rivers is sedimentation — again from primary from surface mining.
- All this pollution has a long list of economic and public health consequences that Kentuckians upstream and down are forced to pay for. It is not right and not necessary.

The permitting processes used in the past are not working to protect our water resources. In ignoring science, common sense and the law, the Corps of Engineers and EPA have failed in their responsibility to enforce the Clean Water Act and the people of Kentucky and Appalachia are paying the price in increased flooding and degraded water.

Coal must be mined more responsibly. It is not necessary or just to destroy headwater streams to provide jobs for miners. Likewise, it is not necessary or just to require miners to work in hazardous conditions or endure unsafe levels of dust, whether they work in rock trucks or

underground. All of these practices are cheaper for the coal industry, but they are not legal, they are not moral, and they will not be tolerated.

While we welcome the proposed actions by the Corps, the announcement comes too late for more than 1,400 miles of Kentucky streams that are buried or significantly degraded by valley fills. This scale of such destruction far exceeds any reasonable definition of “minimal cumulative environmental effects.”

On the basis of sound scientific studies, the EPA has made it clear that the NWP 21 process is not appropriate for coal mining valley fills. In its review of 79 permit applications, the EPA found that all have the potential to cause violations of water quality standards. It found that coal companies had not done enough to minimize or avoid damage to our water or to evaluate cumulative impacts. And, recognizing the importance of headwater streams to ecosystem health, the agency stated that additional steps are needed to ensure adequate stream mitigation.

The damaging impacts of coal mining valley fills are widespread, significant and permanent. The Corps is fully justified in prohibiting the future use of NWP 21 and suspending such use immediately. Thank you for taking these steps in the right direction.

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