MINING: Interior proposes revisions to ownership and control rules

The Interior Department proposed new rules last week that would narrow the scope of responsibility for ownership and control of surface coal mining operations.

Interior's Office of Surface Mining said the rules would provide regulatory clarity without sacrificing the agency's oversight of old or abandoned coal mines. But environmentalists contend the proposed regulations constitute a rollback of environmental protections and would eliminate one of the industry's most important environmental enforcement mechanisms.

At issue is the ownership and control rule within the Surface Mining Control and Reclamation Act, which calls for OSM and state mining programs to refuse new mine permits to companies with outstanding environmental violations.

Under the existing rule, regulators can block a company from obtaining a new coal mining permit if it is connected to another company with an outstanding violation, even if the companies' connection is indirect or exists only through subcontractors and other intermediate firms. The provision -- which was implemented during the former Bush administration -- was created to address potential problems from coal companies' tendency to operate through a string of subsidiaries.

But the proposed revisions -- published in the Federal Register on Dec. 29 -- would limit the scope of pertinent violations to companies that are immediately related to the mining activity at a particular site. The government would hold companies liable for violations only if they are from a subsidiary that is directly operating at the site and those that report directly to the site permit holder.

OSM said the existing rules have been subject to a "virtually uninterrupted" string of lawsuits since 1988. The proposed revisions extend from a settlement in a 2001 lawsuit involving the National Mining Association.

"We view this rulemaking as an opportunity to clarify our regulations and reduce any unnecessary reporting burdens on industry and regulatory authorities, while continuing to ensure that we have the tools we need to enforce SMCRA," said Jeff Jarrett, director of OSM, in a statement. "We intend for this rulemaking initiative to introduce regulatory stability to an area that has been in flux and a source of contentious litigation for over 20 years."

But environmentalists said the rules would undercut a mechanism that has been vital in protecting the environment. "This is one of the very few effective ways that Interior forces the cleanup of abandoned or problem sites," said Glenn Sugameli of Earthjustice. "It prevents the bad apples from getting another chance to pollute, blocks people with outstanding violations, and prevents them from getting new permits to create new problems."
Sugameli, who has filed lawsuits on this issue in the past, said the current regulations have been a powerful deterrent to keep coal companies from polluting and walking away from old sites, since companies know the rules could be used to block future permits. "It's a very effective way to say if you want to keep making money, you've got to clean up your past problems," Sugameli said.

But Sugameli said the proposed revisions would serve as an invitation for coal companies to pollute the environment or leave abandoned mines behind. He said companies could easily create another corporate layer to create separation with entities that are in violation.

But Luke Popovich of the National Mining Association said the proposed new rules would not alter regulations that hold polluting companies responsible for their violations and would do a better job of making "the punishment fit the crime." Popovich said the existing rule has an element of "guilt by association," where an innocent company can be kept from future permits because of its connection to a far-removed consultant or subsidiary.

"We thought [the existing rules] came a little close to violating the sort of coveted principal of 'innocent until proven guilty,'" Popovich said. "We think [the proposed rule] is a good balance between protecting the public interests and protecting elements of fairness in making applications."

The proposed rules are subject to a 60-day public comment period before OSM will consider a final rule.

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