



December 29, 2009

Office of Surface Mining Reclamation and Enforcement
Administrative Record
Room 252–SIB, 1951
Constitution Avenue, NW.
Washington, DC 20240.

Docket ID: OSM–2009–0009

The Freshwater Mollusk Conservation Society wishes to submit the following comments in support of the following alternatives:

Alt 2 (with applicability to **Alt 1** and **Alt 3** as well): While we applaud efforts to amend current regulations on stream buffer rules to establish a 100 foot buffer, we feel that this number may or may not be adequate to protect all streams. Such a determination should be evaluated using information on adjacent stream slopes, geology, soil types, and existing riparian context as contingent factors might require more buffer area than 100 feet. While we recognize that an established criteria is required, a multifactor approach should be considered in establishing the stream buffer rule. We believe that whatever criteria are determined should apply, without exceptions, to any intermittent, temporary, or perennial watercourse. While 100 feet should certainly be considered as a bare minimum in rulemaking, please consider the issues we address here as pertinent to developing better regulatory decisions.

Alt 5 and Alt 6: We support a watershed approach to the mine permitting process with a rule in some combination of both provisions (establishment of thresholds and a watershed planning approach). In evaluating a watershed approach, we believe it is important to specifically define ‘what is a watershed’ for regulatory purposes. We would recommend that cumulative impairments be examined at multiple levels, starting with a very local scale (HUC 14) and include the small watershed scale (HUC 11) to HUC 8 scale (watershed level). Otherwise, true watershed impacts cannot be assessed.

We would recommend that the development of cumulative thresholds be evaluated across various seasonal flow regimes to establish appropriate values. In addition, criteria should be set in relation to least disturbed condition streams from nearby areas. Studies should be funded by OSM and/or applicants to gather information on what the critical environmental thresholds should be for threatened or endangered species (water quality, % local watershed disturbance) as this information is generally lacking. We would strongly recommend that OSM consider the diversity, connectivity, and integrity of freshwater mussel communities within watersheds, especially those downstream of major mining operations. OSM should work directly with EPA, US Geological Survey, and scientific groups such as the North American Benthological Society,

American Fisheries Society, Ecological Society of America and FMCS, to establish a framework for establishing appropriate criteria for biological thresholds.

Also, the effects of mining on groundwater resources must be considered as these connections are critical to the hydrological and biological integrity of watersheds. A cumulative assessment of groundwater integrity should be incorporated with decisions on preferred alternatives.

Alt 8: We strongly support this alternative (submission of SMCRA permit applications to multiple jurisdictional authorities). We view this alternative as a significant legislative step as there are other laws (401 certifications, Endangered Species Act) that should be concomitantly evaluated during the SMCRA process.

Alt 10: We strongly support rulemaking that would appertain to damage of all watercourses from Mountaintop Removal Mining (MTR). The effect of MTRs has been shown by numerous researchers to be devastating on stream communities. We feel that SMCRA should be considering the impact on the entire stream, not just a segment below the lowest mined seam. *However, the revised SMCRA rules should not pertain solely to MTR regulations for Kentucky, Virginia, and West Virginia but instead be included as an addition to these other SMCRA amendments.*

Sincerely,

Ryan Evans and Steven McMurray, Co-chairs
FMCS Environmental Quality and Affairs Cmte