

**Received(Date):** 8 MAY 2002 16:19:40  
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**To:** Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )  
**Subject:** : AP on today's fill rule court decision

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)  
CREATOR: Jay P. Lefkowitz ( CN=Jay P. Lefkowitz/OU=OPD/O=EOP [ OPD ] )  
CREATION DATE/TIME: 8-MAY-2002 16:19:40.00  
SUBJECT: : AP on today's fill rule court decision  
TO: Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN  
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I've mandamus'd this guy before. Think we should offer to help out . . .

----- Forwarded by Jay P. Lefkowitz/OPD/EOP on 05/08/2002  
04:19 PM -----

Samuel A. Thernstrom  
05/08/2002 04:16:21 PM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: AP on today's fill rule court decision

Judge rules Army Corps of Engineers can't issue mountaintop coal mining permits  
By BRIAN FARKAS  
Associated Press Writer  
May 8, 2002

CHARLESTON, W.Va. (AP) -- A federal judge Wednesday ordered the U.S. Army Corps of Engineers to stop issuing the permits needed to conduct mountaintop coal mining, in which the tops of ridges in Appalachia are sheared off and the dirt and rock are pushed into nearby streams.

Environmentalists have bitterly objected to the practice.

The order represents the second time since 1999 that U.S. District Judge Charles Haden II has ruled on the issue. A federal appeals court overturned Haden's earlier ruling, saying he lacked jurisdiction because the underlying lawsuit involved a state agency.

Wednesday's ruling was issued instead against the Army Corps of Engineers, a federal agency.

The ruling stems from a lawsuit filed against the corps in February by the group Kentuckians for the Commonwealth.

In its lawsuit, the group charged the corps "has no legal authority under

the Clean Water Act to issue permits to dispose of waste rock from surface coal mining activities in streams." It asked Haden to block a permit the corps had approved for Beechfork Processing Inc.'s mountaintop removal mine in Martin County, Ky.

Beechfork's mine would create 27 valley fills and bury 6.3 miles of stream.

Coal companies that operate in mountainous Appalachian coalfields have been turning to mountaintop removal mining as an inexpensive way to mine coal reserves. The tops of mountains are sheared off by explosives and large earth moving machines are used to expose coal seams.

Although federal mining laws require companies to reclaim land to its approximate original contour, companies have received permits to dump tons of excess rock and dirt into hollows to create fills.

Of the 306 fill permits issued in 2000 under Section 404 of the U.S. Clean Water Act, the corps' Huntington district issued 257, which accounted for the burial of 85 miles of stream. The remaining permits accounted for 2 miles of stream.

The Huntington district covers West Virginia and portions of Kentucky and Ohio.

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