

The Fourth Circuit has upheld the Army Corp permit program for mountaintop mining, notwithstanding claims that the Corps had violated NEPA, the Clean Water Act, and its own regulations. According to the dissent:

Today's decision will have far-reaching consequences for the environment of Appalachia. It is not disputed that the impact of filling valleys and headwater streams is irreversible or that headwater streams provide crucial ecosystem functions. Further, the cumulative effects of the permitted fill activities on local streams and watersheds are considerable. By failing to require the Corps to undertake a meaningful assessment of the functions of the aquatic resources being destroyed and by allowing the Corps to proceed instead with a one-to-one mitigation that takes no account of lost stream function, this court risks significant harm to the affected watersheds and water resources. We should rescind the four permits at issue in this case until the Corps complies with the clear mandates of the regulations. First, the Corps must adequately determine the effect that the valley fills will have on the function of the aquatic ecosystem. Second, based on this determination, the Corps must certify that the fills, after mitigation is taken into account, will result in no significant degradation of waters of the United States and no significant adverse impact to the human environment.

The case is *OHIO VALLEY v. ARACOMA COAL CO.* (4th Cir. No. 07-1355 Feb. 13m 2009). The contrary district court opinion is [here](#).