

Last month, the [Obama administration announced](#) an interagency agreement to develop a coordinated policy on mountaintop removal mining. Now the Army Corps of Engineers has taken the first step toward implementing that promise. The Corps has been permitting mountaintop mining through Nationwide Permit 21, a process that provides little opportunity for public input and environmental review. Yesterday it published [a proposal](#) to amend NWP 21 to prohibit its use for surface coal mining in Appalachia (in areas where mountaintop removal mining has become common), and to suspend the use of NWP 21 pending that modification. Corps regulations don't permit immediate suspension; the agency must seek comment and allow an opportunity for interested parties to request a public hearing. Comments will be accepted until August 14. No timeline has been given for processing the comments and issuing a suspension, if that's what the Corps decides to do. Meanwhile, the Corps says that it will continue processing applications under NWP 21 (except in the Southern District of West Virginia, where the federal court has enjoined the use of NWP 21), and approvals that become effective before any suspension will be grandfathered.

The Corps does promise that it will “carefully review” applications and

exercise discretionary authority to require an individual permit . . . in cases where the proposed surface coal mining activity presents the potential for more than minimal individual and/or cumulative adverse effects on the aquatic environment or other public interest review factors relevant to jurisdictional waters of the United States.

Ken Ward at Coal Tattoo [puts this proposal in context](#). He notes that it seems to be at odds with the government's decision in June [to appeal](#) the ruling in *Ohio Valley Environmental Coalition v. Hurst*, 604 F. Supp. 2d 860 (S.D. W. Va. 2009), which held that the current version of NWP 21 was unlawfully issued without sufficient environmental analysis. Rob Perks at NRDC [welcomes this proposal](#), but emphasizes the need for an outright ban on mountaintop removal mining.