

OSM officials telling contractors to “pretend” that the 2008 Stream Buffer Zone Rule was implemented and applied across the country when it was not, and explaining that this is “not the real world, this is rulemaking” as justification for using analysis that does not actually consider “conditions on the ground.”

Unofficial Transcript Provided by Contractor

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Contr. 1 6:51 / 8:20	And Dianne, I guess just to kind of put issues on the table, I guess, for this morning. Based on your review, I still have a question I guess. And, I thought we had resolved it in Lexington. Maybe we haven't. But two questions. First, we were told, more than once, to not consider other forces, or other impacts, other than this rule as we go through our analysis. For example, we talked about should we consider transportation, utility, infrastructure. EPA and the Corps are in that list of things. Are we supposed to look at that as drivers or impactors. The answer was 'no, stay away from this.' I specifically asked the question, I think in Atlanta, that if there's a production shift, because we did receive instruction to make sure the thermal capacity of the country stays the, of the coal generation, stays the same. That's a big factor in the model. So I asked a question based on that instruction was, are we to consider whether or not, I'll pick on Wyoming, can in fact pick up a 20 or 25% increase. The answer was 'no.' You assume that that could happen for purposes of this analysis. I don't know if that is changing a little bit here. I'd like to talk about that issue. (8:20) I guess the other issue as well is the, I'll put this I guess Bill Winters and I put it to each other, are we to look at the 2008 stream buffer zone as if it's enforced in every state, or are we to look at current conditions. We debated that for a long time, in several meetings. Based again on your review going back to looking at alternative one, I know Bill feels very strongly that the 2008 standards are in fact enforced in every state. They may be in Tennessee, which has a federal program, but it's not true in other states. He knows that, OSM knows that. So, we have enough multipliers as far as far as how big this analysis was going to be if we now have to add 13 or 16, whatever it is, states, they each may have their own interpretation or application of this. Most of its going to be Appalachia-based, of course. I guess we were, when Liz and I worked on alternative two, or chapter two alternatives, the matrix. The instruction was to not really look at that. I'm not sure how to put this. We did not consider the 2008 stream buffer zone as in effect for the analysis, for the matrix. Which resulted in, if you now, I guess, John has heard this over and over and over again all these meetings. If you now say, or define stream differently, or the protection zone differently. It is different, because 2008 SBZ is not being enforced, it doesn't apply. So, those are big issues in compiling these chapters, when you say compare us to the norm, there may be a good disagreement now as to what the norm is, I don't know.
OSM	No, it's not comparisons to...
Contr. 1	Not to norm, or what's in existence
OSM 10:24	I mean, the EIS is going from one rule, we're looking at going from one rule to the next rule. So it's a 2008, it's a federal rule because of the way SMCRA is set up, the states will have an opportunity to (unintelligible) with their own program, there will be determinations, variations Our job on the EIS is to just to compare this federal rule with the proposed federal rule. So it's not, you're not looking at conditions on the ground. You are looking at the 2008 rule as implemented and that is, and with a facility that is in compliance with the 2008 rule.
Contr. 1	I hate to sound like a lawyer here but I'm going to. Every state's approved program is part of the federal rule. I mean, Kentucky's regulations are adopted in the CFR so...
OSM 11:28	This is not the real, it's almost Joe, it's not the real world, this is rulemaking.
Contr. 1	If we're to assume 2008 is enforced in the coal-producing states, this is a very small EIS. Because one could argue, and I think Bill Winters has argued very forcefully, that the change therefore is not very significant. But that, as you said, is not the real world, that's pretending, and that's fine if that's our the instructions. That is enforced, those standards exist. Because I thought we were looking at what's going to change in Kentucky, what's going to change in Pennsylvania, what's going to change in Ohio, what's going to change in Wyoming. And, we're looking at where you can now get a permit. Where you can now put excess spoil. Where you now determine a stream exists or doesn't exist. I got to tell you, that's the way I went at this, which was what's going to happen and that's the way the production shift initial analysis looked at it too. How difficult is it to permit steep terrain, flat terrain, existing mines, new mines. Based on, again I understand where Bill is coming from, he's coming from the only state that has permitting and enforcement, the only state in the country that has a federal program.
OSM 12:47	You guys are having a theoretical discussion which is lively and interesting...
Contr. 1	Well his was theoretical, mine was practical.

>>Joe: And Dianne, I guess, just to kind of put issues on the table I guess for this morning, based on your review, I still have a question, I guess. And I thought we resolved it in Lexington but maybe we haven't. Two questions. First, [REDACTED]

>>Diane: Right.

>> Joe: [REDACTED]

[REDACTED]

>>Diane: What's not [REDACTED]

>>Joe: Oh my [REDACTED]

>>Diane: The EIS is going for one rule -- we're looking at going from one rule to the next rule, okay.

Joe: Right.

>>Diane: So it's [REDACTED] --

>>Joe: Right.

>>Diane: Because of the way this macro is set up, the states want an opportunity to come in with their own program amendments. You know, there'll be determinations, there'll be variations. [REDACTED]

[REDACTED]

>>Joe: [REDACTED]

[REDACTED]

>>Diane: [REDACTED]

[REDACTED]

>>Joe: [REDACTED]

[REDACTED]

>>Diane: You guys are having a theoretical discussion which is lively and interesting --

>>Joe: Well, his is theoretical, I think that that's practical.

Stip

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