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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

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October 16, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Carrie Chambers
DEP-Mining & Reclamation, Office of
10 McJunkin Road
Nitro, WV 25143
FROM: Legislative Rule-Making Review Committee
Proposed Rule: **Surface Mining Reclamation Rule, 38CSR2**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

Section 3.32.g. is amended to provide that for remining permits, for the purpose of determining a permit violation, a unanticipated event means a event that arose after the remining permit was issued, was related to the prior mining activities and was not identified in the remining permit.

Section 5.2.a. rewrites language relating to disturbance of intermittent or perennial streams. This section prohibits adverse impact to these streams. Language is stricken relating to stream gradient, fish migration or related environmental values in favor of prohibiting adverse impacts to water quality or "environmental resources."

Section 11.3.a. is amended to require that surety companies executing bonds for coal operators are certified by the U.S. Treasury as acceptable surety on federal bonds.

Section 12.2.e. is amended to provide that no bond release is allowed if water discharged receives passive treatment to meet effluent limitations or water quality standards. The rule currently only prevents bond release if chemical treatments are utilized to meet this standard.

Section 14.8.a.6. is amended to insert minimum engineering standards for outcrop barriers used to control water flows off mine sites.

Section 16.2.c.4. is rewritten. This section provides for notice of subsidence and requires that permittees undertake repairs or replacement within 90 days of notice. The Director may extend this period if subsidence is not complete or it is otherwise unreasonable to complete abatement within the required time period.

Section 24.4 is amended to remove certain bond release requirements that OSM has requested be deleted.

AUTHORITY

Statutory authority: W.Va. Code, §22-3-4 which provides:

(a) The director shall administer the provisions of this article relating to surface-mining operations. The director has

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.