



ANALYSIS OF PROPOSED LEGISLATIVE RULE

FILED

Agency: DEP- Office of Surface Mining 2002 DEC 31 A 9 11  
Subject: Surface Mining Reclamation Rule OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
CSR Cite: 38CSR2  
Counsel: JAA

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PERTINENT DATES

Filed for public comment: June 17, 2002  
Public comment period ended: July 25, 2002  
Filed following public comment period: July 26, 2002  
Filed LRMRC: July 26, 2002  
Filed as emergency: No.

**Fiscal Impact:** None.

ABSTRACT

Brief Summary

Several revisions have been made to this rule will require underground mining permittees to provide additional analysis of surface water impacts associated with underground mining activities and provide for replacement of water supplies. Additional changes to the rule are intended to reflect program amendments approved by the OSM, provide a methodology for the DEP to allocate funds from the Small Operators Assistant Program, and make changes to impoundments that comport to the revisions to 38CSR2, the Coal Related Dam Safety Rule.

## Section Summary

Section 3.12.a.1. requires the permit mine topographic map to include identification of lake reservoirs, ponds, wetlands, rivers and springs, and be included as part of accompanying narrative of mining impacts to these water features.

Section 3.12.a.7. requires the operator to restore surface waters to a condition capable of sustaining any use impacted by mining activities.

Section 3.22.f.5.A. is new and requires as part of a permit application a plan for replacement of water supplies that will be contaminated, diminished or interrupted. The plan is to include assurances that water replacement will be sufficient.

Section 3.31.a is amended to allow for a variance from AOC exemption for construction undertaken as an approved government reclamation contract, regardless of the amount of federal or state funding of the project. The current rule requires that the project be at least 50% government funded.

Sections 9.3.d. & f. are amended to remove a reference to a handbook and authorizes the DEP to determine revegetation success.

Section 14.5.h. is amended to prohibit water supply replacement agreements between a surface owner and an operator from waiving post mining land use requirements.

New Section 16.2.e. prohibits underground mining activities beneath or adjacent to perennial and intermittent streams, lakes, reservoirs, ponds, wetlands, river and springs unless the DEP finds that mining will not reduce existing uses. The Secretary of DEP may suspend any mining if subsidence causes reduction in these existing uses.

Section 17.1 is amended to require the DEP to establish a formula for allocating funds to assist small operators through the Small Operator Assistance Program. This program assists small operators in determining the probable hydrologic consequences of mining and reclamation.

Section 20.6.a. is amended to remove the authority of

assessment officers to continue investigations after an order is served. Investigatory authority will be retained by the agency rather than assessment officers.

Section 20.6.d., notice requirements for informal assessment conferences has been amended. The operator is required to remit the contested assessment into an escrow account pending disposition of the final assessment.

Section 20.6.e. is amended to require the assessment officer to provide a copy of any penalty worksheet, and any penalty adjustments that result from the informal conference within thirty days following the conference.

New Section 20.6.f. provides that if a penalty is reduced by the informal conference by more than 25% or by more than \$500.00, the reduction must be approved by the Secretary.

Section 22.4.g.3.A. is amended to require all impoundments to have a system that will allow dewatering of the impoundment of storm discharge within 10 days. Currently the rule requires that the water be removed without the requirement that a system designed for this purpose be in place.

New Section 22.4.i.6. provides that pipe spillways shall be designed to withstand maximum pressure associated with flow conditions and that pressure testing must be conducted at installation.

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#### 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 within his or her jurisdiction and supervision all lands and areas of the state, mined or susceptible of being mined, for the removal of coal and all other lands and areas of the

state deforested, burned over, barren or otherwise denuded, unproductive and subject to soil erosion and waste. Included within such lands and areas are lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamp lands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the director shall be consistent with other provisions of this chapter.

(b) The director has the authority to:

(1) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement the provisions of this article....

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**ANALYSIS**

I. **HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?**

No.

II. **IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?**

Yes.

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.