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WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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January 08, 2003

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

TO: Joe Manchin, Secretary of State, State Register

TO: Charlie Sturey  
DEP-Mining & Reclamation, Office of  
10 McJunkin Road  
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Coal Related Dam Safety Rule, 38CSR4**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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

ANALYSIS OF PROPOSED LEGISLATIVE RULE

FILED

Agency: DEP-Division of Mining and Reclamation

2002 DEC 31 A 9 11

Subject: Coal Related Dam Safety Rule

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

CSR Cite: 38CSR4

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

Section Summary

This rule is being amended to include additional requirements relating to pipe spillway design requirements for storm water impoundments.

Per Section 7.1.f.3.A., Class C dams must be designed to dewater an impoundment of a probable maximum storm within 10 days by pumping or other means.

New Section 7.1.n. requires that pipe spillways be designed to withstand maximum pressure associated with flow conditions and

pressure testing shall be conducted before the pipe becomes operational.

New Section 25.14 requires storm water be removed as specified in design requirements and maintained at lowest practical pool level without violating effluent limits. Any dewatering system is to be properly designed and installed and tested monthly.

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**AUTHORITY**

Statutory authority: W.Va. Code, §22-14-4, which provides:

The director has the following powers and duties:

(a) To control and exercise regulatory jurisdiction over dams as provided for in this article;

(b) To review all applications for a certificate of approval for the placement, construction, enlargement, alteration, repair or removal of any dam;

(c) To grant, modify, amend, revoke, restrict or refuse to grant any certificate of approval if proper or necessary to protect life and property as provided in this article;

(d) To adopt, modify, repeal and enforce rules and issue orders, in such manner as the director may otherwise do, to implement and make effective the powers and duties vested in it by the provisions of this article;

(e) To take any lawful action considered necessary for the effective enforcement of the provisions of this article....

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.