

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**
Form #3

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SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Environmental Protection, Office of Water Resources TITLE NUMBER: 47

CITE AUTHORITY § 22-1-3(a)

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30

TITLE OF RULE BEING AMENDED: WV/NPDES Regulations for Coal Mining Facilities

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Barbara S. Taylor

Barbara S. Taylor, Chief
Division of Environmental Protection
Office of Water Resources

18.70



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

August 30, 1996

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

RE: 47CSR30 - "WN/NPDES Rules for Coal
Mining Facilities"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office the above-referenced rule as an Agency-Approved Rule and submission to the Legislative Rule-Making Review Committee.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Mark Scott at 759-0515.

Sincerely yours,

A handwritten signature in cursive script, reading "Laidley Eli McCoy".

Laidley Eli McCoy, Ph.D.
Commissioner

LEM:cc

Attachment

DATE: August 29, 1996
TO: Legislative Rule-Making Review Committee
FROM: Ken Politan

LEGISLATIVE RULE TITLE: WV/NPDES Regulations for Coal Mining Facilities

1. Authorizing statute(s) citation: §22-1-3(a)
- 2.a. Date filed in State Register with Notice of Hearing: July 17, 1996
- 2.b. What other notice, including advertising, did you give of the hearing? Notification given statewide through Division of Environmental Protection 'In Depth' and 'Public Notice Bulletin' plus specific notification provided through agency's mailing list.
- 2.c. Date of hearing(s): August 21, 1996
- 2.d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments:
Attached X No comments received _____
- 2.e. Date agency approved proposed Legislative Rule filed in State Register following public hearing: August 29, 1996
- 2.f. Name and telephone of agency contact: Ken Politan (304) 759-0510
3. If the statute under which the rule was promulgated and submitted requires certain findings and determinations to be made as a condition precedent to their promulgation:
 - 3.a. Date on which a notice of the time and place of hearing for the taking of evidence and a general description of the issues to be decided was filed in the State Register: N/A
 - 3.b. Date of hearing: N/A
 - 3.c. Date the required findings and determinations together with reasons therefor were filed in the State Register: N/A
 - 3.d. Findings and determinations, and reasons (attached). N/A

**Bureau of Environment
Division of Environmental Protection**

Briefing Document

Rule Title:

WV/NPDES REGULATIONS FOR COAL MINING FACILITIES

Authority:

WV CODE §22-1-3(a).

Summary of Rule:

The purpose of the proposed rule is to update the rule to current federal requirements.

On February 4, 1987, the federal Clean Water Act was amended to allow 'best professional judgement', regarding effluent limitations, on a case-by-case basis for pre-existing discharges on remining operations. These proposed rule changes along with the Division of Environmental Protection's Coal Remining Policy and the Environmental Quality Board's regulations pertaining to site specific revisions to water quality standards, will not only update this rule to the current federal requirements, but will provide incentives to the coal industry to remine abandoned mine sites,

Statement of Circumstances Which Require the Rule:

The rule will be current with existing federal requirements.

The rule as proposed will provide incentives to the mining industry to remine abandon sites which will in turn result in cost savings to the State's Abandoned Mine Land Program

Water quality, both on site and in the streams will be improved.

Prior abandoned mining sites will be reclaimed to current environmental standards.

**Federal Counterpart Regulations and
Incorporation By Reference/Determination of Stringency:**

There is no counterpart federal regulation and therefore a determination of stringency is not applicable.

Constitutional Takings Determination:

The Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America. The Director further finds that this rule is consistent with the declaration of Policy provided for in §22-11-2 of the West Virginia Code.

Consultation with the Environmental Protection Advisory Council:

At their July 17 meeting, the Environmental Protection Advisory Council had no comments on this rule (see attached minutes of July 17 Council Meeting).

FISCAL NOTE FOR PROPOSED RULE

Rule Title: WV/NPDES REGULATIONS FOR COAL MINING FACILITIES

47 C.S.R. 30

Type of Rule: X Legislative Interpretive Procedural

Agency: Office of Water Resources, Division of Environmental Protection

Address: 10 McJunkin Road, Nitro, West Virginia 25143

| 1. Effect of Proposed Rule | ANNUAL | | FISCAL YEAR | | |
|----------------------------|----------|------------------------------|-------------|------|------------|
| | Increase | Decrease | Current | Next | Thereafter |
| Estimated Total Cost | \$ | No Change from current costs | | | |
| Personal Services | \$ | | | | |
| Current Expenses | \$ | | | | |
| Repairs & Alterations | \$ | | | | |
| Equipment | \$ | | | | |
| Other | \$ | | | | |

2. Explanation of above estimates: The changes proposed in this rule modification have been implemented in the past through policy, therefore, there is no change from the existing program cost.

3. Objectives of this rule: Update rule to federal requirements, provide incentives to the mining industry to remine abandoned mine sites, reclaim abandoned mining sites to current environmental standards and improve water quality on site and in streams.

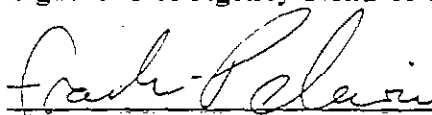
4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. With abandoned mine sites being reclaimed through remining by industry, Division of Environmental Protection's Abandoned Mine Land Program should be able to reclaim sites not suitable to remining

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens. In those instances where applicable, the proposed provisions should result in a win-win situation

C. Economic Impact on Citizens/ Public at Large. In general there is no economic impact to these groups.

Signature of Agency Head or Authorized Representative


 Division of Environmental Protection

Date: July 17, 1996

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES

SERIES 30
WV/NPDES REGULATIONS FOR COAL MINING FACILITIES

§47-30-1. General.

1.1. Scope. -- These regulations establish requirements implementing the powers, duties, and responsibilities of ~~Article 5A of Chapter 20 of the West Virginia Code~~ West Virginia Code §22-11 with respect to all coal mines, preparation plants and all refuse and waste therefrom in the State which are vested in the director pursuant to ~~W. Va. Code §20-6-43.~~

1.2. Authority. -- W. Va. Code ~~§20-1-7(30)~~ §22-11-10.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Applicability. -- ~~These regulations~~ This rule shall apply to all coal mines, preparation plants and refuse and waste therefrom as defined herein. ~~These regulations also establish a transition program for those pending Article 5A permit applications for which a draft permit has been prepared.~~

1.6. Invalidation. -- If any provision of ~~these regulations~~ this rule or the application thereof to any person or circumstance is held invalid, then such invalidity shall not affect other provisions or applications of ~~these regulations~~ this rule.

1.7. Incorporation by reference. -- Whenever federal statutes or regulations are incorporated into ~~these regulations~~ this rule, the reference is to the statute or regulation in effect on May 29, 1987.

1.8. Promulgation history. -- ~~These regulations~~ This rule originally ~~become~~ became effective on the 30th day of May, 1985, ~~that being the date on which the Governor issued a proclamation stating that final approval of the partial transfer of the National Pollutant Discharge Elimination System (NPDES) established under the federal Clean Water Act contemplated by W. Va. Code §20-6-43 had been given by the Administrator of the United States Environmental Protection Agency.~~ Amendments to ~~these regulations~~ this rule were made effective on April 24, 1986, ~~and on May 29, 1987~~ and on April 1, 1988.

1.9. Conflict of interest. -- The director or his authorized representative who has or shares authority to approve all or portions of permits, either in the first instance or as modified and reissued, shall not be a person who receives or has during the previous two (2) years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

1.9.1. For the purposes of this paragraph:

1.9.1.a. "Significant portion of income" means five thousand dollars (\$5,000) or ten percent (10%) or more of gross personal income for a calendar year, whichever is less, except that it means fifty percent (50%) or more of gross personal income for a calendar year if the recipient is over sixty (60) years of age and is receiving that portion under retirement, pension, or similar arrangement.

1.9.1.b. "Permit holders or applicants for a permit" does not include any department or agency of the State.

1.9.1.c. "Income" includes retirement benefits, consultant fees, and stock dividends.

1.9.1.d. Income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the ~~identify~~ identity of the primary sources of income.

§47-30-2. Definitions.

The definitions set forth in ~~Chapter 20, Article 5A, Section 2, of the West Virginia Code WV Code §22-11-3~~ shall apply to ~~these regulations~~ this rule along with the following definitions, unless the context clearly indicates otherwise.

2.1. "Administrator" means the administrator of the United States Environmental Protection Agency, or an authorized representative of the administrator.

2.2. "Applicable Standards and Limitations" means all State, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) Sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 and ~~Article 5A WV Code §22-11~~ including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and pretreatment standards.

2.3. ~~"Article 5A Article 11"~~ means the West Virginia Water Pollution Control Act, ~~Article 5A, Section 1 et seq. of Chapter 20 of the West Virginia Code WV Code §22-11-1 et seq.~~

2.4. "Average Monthly Discharge Limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

2.5. "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs may include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

2.6. "Clean Water Act" or "CWA" means Public Law 92-500, as amended by Public Law 95-217 Public Law 95-576; 33 U.S.C. §1251 et seq. (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972).

2.7. "Continuous Discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

2.8. "Coal Mines, Preparation Plants and All Refuse and Waste Therefrom" means any point source covered under 40 C.F.R. Part 434 and any coal mine, coal preparation plant, coal preparation plant associated areas, refuse pile, coal waste pile, or other related activity including any related sewage treatment facilities and bath houses required to have a permit under CWA or ~~Article 5A WV Code §22-11~~, but excluding dredging operations or the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen (16) and two-thirds percent (~~2/3%~~) (16 2/3%) of the tonnage of minerals removed for purposes of commercial use or sale.

2.9. "Coal Mine" or "Mine" means the area, and any related structures, on and beneath land, used or disturbed in activity related to the extraction, removal or recovery of coal.

2.10. "Coal Preparation Plant" means a facility where coal is subjected to cleaning, concentrating, or other processing or preparation in order to separate coal from its impurities and is loaded for transit to a consuming facility.

2.11. "Coal Preparation Plant Associated Areas" means the coal preparation plant yards, immediate access roads, coal refuse piles, tipples, loadouts, and coal storage piles and facilities.

2.12. "Coal Remining Operation" means a coal mining operation which begins after February 4, 1987 at a site on which coal mining was conducted before the effective date of the federal Surface Mining Control and Reclamation Act of 1977.

~~2-12.~~ 2.13. "Daily Discharge" means the discharge of a pollutant measured during a calendar day or within any specified period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

~~2-13.~~ 2.14. "Discharge" when used without qualification means the discharge of a pollutant.

~~2-14.~~ 2.15. "Discharge of a Pollutant" means:

~~2-14.1.~~ 2.15.1. Any addition of any pollutant or combination of pollutants to waters of the State from any point source; and

~~2-14.2.~~ 2.15.2. This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channeled by man; discharges through pipes, other conveyances owned by a person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

~~2-15.~~ 2.16. "Discharge Monitoring Report" or "DMR" means the form(s) prescribed by the director and approved by EPA for the reporting of self-monitoring results by permittees under WV/NPDES.

~~2-16.~~ 2.17. "Draft Permit" means a document prepared under Section 10.1 of these regulations this rule indicating the director's tentative decision to issue, modify, reissue, suspend or revoke a permit.

~~2-17.~~ 2.18. "Effluent Limitation" means any restriction established under State or federal law on quantities, discharge rates and concentrations of pollutants which are discharged from point sources into waters of the State.

~~2-18.~~ 2.19. "Effluent Limitations Guidelines" means a regulation published by the Administrator to adopt or revise effluent limitations under CWA Section 304(b) or to adopt or revise levels of effluent quality attainable through the application of secondary or equivalent treatment under CWA Section 301(b)(1)(B). For the coal industry, such regulations are published at 40 C.F.R. Part 434. Sewage facilities governed by these regulations are covered under 40 C.F.R. Part 133.

~~2-19.~~ 2.20. "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

~~2.20.~~ 2.21. "Existing Source" means any coal mine, preparation plant and all refuse or waste therefrom:

~~2.20.1.~~ 2.21.1. From which there is or may be a discharge of pollutants which commenced prior to September 19, 1977; and

~~2.20.2.~~ 2.21.2. Which is not a new source.

~~2.21.~~ 2.22. "Facility" or "Activity" means any coal mine, preparation plant and all refuse and waste therefrom or any other facility or activity (including land or appurtenances thereto) that is subject to the provisions of ~~these regulations~~ this rule.

~~2.22.~~ 2.23. "General Permit" means a WV/NPDES permit authorizing a category of discharges within a geographical area.

~~2.23.~~ 2.24. "Hazardous Substance" means any substance designated under 40 C.F.R. Part 116 pursuant to CWA Section 311.

~~2.24.~~ 2.25. "Indirect Discharger" means a nondomestic discharger introducing pollutants to publicly owned treatment works.

~~2.25.~~ 2.26. "Interstate Agency" means an agency of two (2) or more states, including West Virginia, established on or under an agreement or compact approved by the Congress, or any other agency of two (2) or more states including West Virginia, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under CWA and regulations promulgated thereunder.

~~2.26.~~ 2.27. "Major Facility" means any WV/NPDES facility or activity classified as such by the director or by the Regional Administrator in conjunction with the director.

~~2.27.~~ 2.28. "Maximum Daily Discharge Limitation" means the highest allowable daily discharge.

~~2.28.~~ 2.29. "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, denying, modifying, revoking and reissuing, suspending, revoking, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under CWA Sections 307, 318, 402, and 405, including any approved State program.

~~2.29.~~ 2.30. "New Source" means any coal mining facility covered under 40 C.F.R. Part 434, including an abandoned mine which is being remined, the construction of which is commenced after the date of promulgation of a new source performance standard (NSPS) or of the proposal of a NSPS which is subsequently promulgated in accordance with Section 306 of CWA.

~~2.29.1.~~ 2.30.1. In making the determination of major alteration the director shall take into account whether one or more of the following events resulted in a new, altered or increased discharge of pollutants after the date of a new source performance standard or of the proposal of a new source performance standard subsequently promulgated in accordance with Section 306 of CWA.

~~2.29.1.a.~~ 2.30.1.a. Extraction of a coal seam not previously extracted by that mine;

~~2.29.1.b.~~ 2.30.1.b. Discharge into a drainage area not previously affected by wastewater discharge from the facility covered under 40 C.F.R. Part 434;

~~2.29.1.c.~~ 2.30.1.c. Extensive new surface disruption at the mining operation;

~~2.29.1.d.~~ 2.30.1.d. A construction of a new shaft, slope, or drift.

~~2.29.2.~~ 2.30.2. For a preparation plant or associated areas under 40 C.F.R. Part 434, a new source shall be a preparation plant or associated area, the construction of which is commenced after the date of promulgation of a new source performance standard (NSPS) or of the proposal of a NSPS which is subsequently promulgated in accordance with Section 306 of CWA, and which meets the criteria of Section 12.3 of these regulations this rule.

~~2.29.3.~~ 2.30.3. No provision in this definition shall be deemed to affect the classification of a facility as a new source which was so classified under previous EPA regulations, but would not be classified as a new source under this definition. Nor shall any provision in this definition be deemed to affect the standards applicable to such facilities, except as provided in Section 12.3 of these regulations.

~~2.30.~~ 2.31. "Operator" means any person, firm, or company who is granted or who should obtain a WV/NPDES permit.

~~2.31.~~ 2.32. "Owner" means the owner of the facility subject to regulation.

~~2.32.~~ 2.33. "Point Source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

2.34. "Pre-Existing Discharge" means any discharge at the time of permit application under this subsection 301(p) of the Federal Clean Water Act. A discharge "from the remined area" is a pre-existing discharge originating from within the active remining site. A discharge "affected by the remining operation" is one where there is a demonstrated

hydrological connection between the remining activity and a given pre-existing discharge. A pre-existing discharge may originate from within the coal remining operation or from outside the coal remining operation provided there is a demonstrated hydrological connection between the coal remining operation and the pre-existing discharge.

~~2.33.~~ ~~2.35.~~ "Privately Owned Treatment Works" means any device or system which is used to treat wastes other than the owner's wastes and is not a POTW.

~~2.34.~~ ~~2.36.~~ "Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

~~2.35.~~ ~~2.37.~~ "Proposed Permit" means a WV/NPDES permit prepared after the close of the comment period (and, when applicable, any public hearing) and which is sent to EPA (pursuant to the Memorandum of Agreement) for review before final issuance by the director.

~~2.36.~~ ~~2.38.~~ "Publicly Owned Treatment Works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality, public service district, sanitary district, or other public body. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

~~2.37.~~ ~~2.39.~~ "Recommencing Discharger" means a source which recommences discharge after terminating operations.

~~2.38.~~ ~~2.40.~~ "Regional Administrator" means the Regional Administrator of Region III of the Environmental Protection Agency, or an authorized representative.

~~2.39.~~ ~~2.41.~~ "Reissuance" means the issuance of a permit to a facility which has a previously issued effective permit and includes automatic revocation of the previously issued permit.

~~2.42.~~ "Remined Area" means only that area of any coal remining operation on which coal mining was conducted before the effective date of the federal Surface Mining Control and Reclamation Act of 1977.

~~2.40.~~ ~~2.43.~~ "Schedule of Compliance" means a schedule of remedial measures in a WV/NPDES permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with CWA, Article 5A WV Code §22-11, and ~~regulations~~ the rules promulgated thereunder.

~~2.41.~~ ~~2.44.~~ "Secretary" means the Secretary of the Army acting through his Chief of Engineers.

~~2.42.~~ 2.45. "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

~~2.43.~~ 2.46. "State" means the State of West Virginia.

~~2.44.~~ 2.47. "Total Dissolved Solids" means the total dissolved (filterable) solids as determined by the use of the method specified in 40 C.F.R. Part 136.

~~2.45.~~ 2.48. "Toxic Pollutant" means any pollutant listed as a toxic under CWA Section 307(a)(1) (see Appendix A of ~~these regulations~~ this rule).

~~2.46.~~ 2.49. "Variance" means any mechanism or provision under CWA Sections 301 or 316 or under 40 C.F.R. Part 125 or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on CWA Sections 301(c), 301(g), 301(i), 302(b)(2), and 316(a) where appropriate.

~~2.47.~~ 2.50. "West Virginia Surface Coal Mining and Reclamation Act" or "WVSCMRA" means ~~Article 3 of Chapter 22A 22 of the West Virginia Code.~~ WV Code §22-3-1 et seq.

~~2.48.~~ 2.51. "WV/NPDES Application" or "Application" means the forms prescribed by the director and approved by the EPA for applying for a permit or permit modification, including any additions, revisions or modifications to the WV/NPDES forms. The WV/NPDES Application form is filed as the procedural rule 47 CSR 30A.

~~2.49.~~ 2.52. "WV/NPDES Permit" or "Permit" means an authorization issued by the director to implement the requirements of ~~Article 5A.~~ WV Code §22-11 including modifications to permits.

~~2.50.~~ 2.53. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

§47-30-3. Permits.

3.1. Permit requirement; exemptions; prohibitions.

3.1.1. Except as authorized by a WV/NPDES permit no person shall:

3.1.1.a. Discharge pollutants from a point source associated with any coal mine, preparation plant, and all refuse and waste therefrom;

3.1.1.b. Make, cause, or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet from a facility for the discharge of pollutants or the effluent therefrom into the waters of the State;

3.1.1.c. Acquire, construct, install, modify, or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated waste or effluent from any facility into the waters of the State, or any extension to or addition to such disposal system;

3.1.1.d. Extend, modify, add to or increase in volume or concentration any pollutants or effluent from any point source associated with any facility in excess of the discharges or disposition specified or permitted under any existing permit;

3.1.1.e. Construct, install, modify, open, reopen, operate, or abandon any coal mine, coal preparation plant, or coal preparation plant associated areas whenever such facilities have associated with them or might reasonably be expected to have associated with them a discharge into or pollution of waters of the State except that a WV/NPDES permit shall be required for any coal preparation plant regardless of whether it has, may have or might reasonably be expected to have a discharge.

3.1.2. A WV/NPDES permit issued pursuant to Section 3 of ~~these regulations~~ this rule shall be deemed to be a permit issued in accordance with ~~Article 5A WV Code §22-11-1 et seq~~ and CWA.

3.1.3. No facility may be an indirect discharger.

3.2. Prohibition against issuing a WV/NPDES permit.

3.2.1. A WV/NPDES permit may not be issued:

3.2.1.a. When the conditions of the permit do not provide for compliance with the applicable requirements of CWA and ~~Article 5A WV Code §22-11-1 et seq~~;

3.2.1.b. By the director where the Regional Administrator has objected to issuance of the WV/NPDES permit;

3.2.1.c. When in the judgment of the Secretary anchorage and navigation in or on any waters of the State would be substantially impaired by the discharge;

3.2.1.d. For the discharge of any radiological, chemical, or

biological warfare agent or high level radioactive waste;

3.2.1.e. For any discharge inconsistent with a plan or plan amendment approved under CWA Section 208(b);

3.2.1.f. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards unless the applicant has met the requirements of Section 4.5.5 of ~~these regulations~~ this rule or has met the requirements for a variance under Section 4.5.6 of ~~these regulations~~ this rule;

3.2.1.g. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; or

3.2.1.h. To any facility which is an indirect discharger.

3.3. Denial of Permits. -- WV/NPDES permits may be denied for noncompliance with ~~Article 5A WV Code §22-11-1 et seq~~ or ~~these regulations~~ this rule including the reasons specified in Section 8.4 of ~~these regulations~~ this rule or when a surface mining permit under WVSCMRA has been denied. In the case of an application for reissuance an outstanding violation of an existing permit is grounds for denial. Any denial of the WV/NPDES permit is appealable to the ~~State Water Resources Board~~ West Virginia Environmental Quality Board pursuant to ~~W. Va. Code §20-6-43(d)~~ and in accordance with the procedures and authority of ~~W. Va. Code §20-5A-15~~ WV Code §22-11-21.

3.4. Effect of a permit.

3.4.1. Except for any toxic effluent standards and prohibitions imposed under CWA Section 307, compliance with a permit during its term constitutes compliance, for purposes of enforcement with CWA Sections 301, 302, 306, 307, 318, 403, and 405 and ~~Article 5A WV Code §22-11-1 et seq.~~ However, a permit may be modified, reissued or revoked during its term for cause as set forth in Section 8 of ~~these regulations~~ this rule.

3.4.2. Issuance of a WV/NPDES permit does not convey any property rights of any sort, or any exclusive privilege.

3.5. Duration and transferability of permits.

3.5.1. Duration. -- WV/NPDES permits shall be effective for a fixed term not to exceed five (5) years. The director may shorten the term of a WV/NPDES permit to ensure that expiration dates of the WV/NPDES permit and the permit issued under WVSCMRA coincide, but a WV/NPDES permit may not be shortened to less than three and one-half years for the sole purpose of reconciling expiration dates of WVSCMRA and WV/NPDES permits unless the permittee agrees.

3.5.2. Extension. -- A WV/NPDES permit may be extended by the director for a period not to exceed eighteen (18) months beyond its expiration date if the applicant has made a timely and complete application for permit reissuance. Timeliness of an application for permit reissuance is governed by Section 4.4 of ~~these regulations~~ this rule. A complete application for the purpose of this extension shall mean that the required number of copies of the application were submitted, including the filing fee of fifty dollars (\$50.00), the application questions are sufficiently answered except those required by Sections 4.5.2.f, 4.5.2.g, and 4.5.2.i of ~~these regulations~~, this rule and the application forms were signed as required under Section 4.7 of ~~these regulations~~ this rule. A determination of the application's completeness as set forth in Section 4.3 of ~~these regulations~~ this rule shall not preclude the director from requesting additional information from the applicant during the subsequent substantive review. Permits extended under Section 3.5.2 of ~~these regulations~~ this rule remain fully effective and enforceable. When a WV/NPDES permit is reissued the existing permit is automatically void.

3.5.3. Transfer of permits. -- Permits may be transferred from a permittee to a new operator by either modifying an existing permit pursuant to Section 8.2.3.a.4 of ~~these regulations~~ this rule, reissuing the permit under Section 8.3.3.c of ~~these regulations~~ this rule or by an automatic transfer under Section 3.5.4 of ~~these regulations~~ this rule. In transferring a permit from a permittee to a new operator, the director shall determine that the proposed permittee has all necessary permit responsibility.

3.5.4. Automatic transfer of permits. -- Any permit may be automatically transferred to a new permittee if:

3.5.4.a. The current permittee notifies the director on the forms prescribed, at least thirty (30) days in advance of the proposed transfer date; and

3.5.4.b. The notice includes a written agreement between the existing and proposed permittee containing a proposed date for transfer of the permit and explaining the extent of permit responsibility, coverage, and liability between them; and

3.5.4.c. The director does not notify the existing permittee and the proposed new permittee of his intent:

3.5.4.c.1. To deny the transfer request, or

3.5.4.c.2. To require the transfer through permit
modification, or

3.5.4.c.3. To require the transfer through reissuance and require a new application be filed rather than approving the transfer; and

3.5.4.c.4. Notification under Section 3.5.4.c of ~~these~~

~~regulations~~ this rule is not received by the permittee and proposed new permittee within forty-five (45) days after receipt of the current permittee's notification under Section 3.5.4.a of these regulations this rule.

3.5.5. Permits Issued after July 1, 1984. -- A permit may be issued to expire on or after the statutory deadline set forth in CWA Sections 301(b)(2)(A), 301(b)(2)(C), and 301(b)(2)(E) (July 1, 1984) if the permit includes effluent limitations to meet the requirements of CWA Sections 301(b)(2)(A), 301(b)(2)(C), 301(b)(2)(D), 301(b)(2)(E), and 301(b)(2)(F), whether or not the applicable effluent limitations guidelines have been promulgated or approved. A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under this paragraph is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

3.6. NPDES Permits Issued by EPA and the Chief of the ~~Division~~ Office of Water Resources.

3.6.1. The director shall administer and enforce all WV/NPDES or ~~Article 5A~~ WV Code §22-11 permits relating to coal mines, preparation plants and all refuse and waste therefrom issued by the chief.

3.6.2. The director shall administer and enforce all NPDES permits relating to coal mines, preparation plants and all refuse and waste therefrom that have been adopted by the chief prior to the original effective date of ~~these regulations~~ this rule (May 30, 1985): **Provided**, That in the event of a conflict between an adopted NPDES permit and a WV/NPDES permit or ~~Article 5A~~ WV Code §22-11 permit the more stringent provisions shall apply.

3.6.3. The director may adopt as WV/NPDES permits all NPDES permits relating to coal mines, preparation plants and all refuse and waste therefrom issued by the Regional Administrator which are transferred by the Regional Administrator and accepted by the director. Acceptance of an NPDES permit from the Regional Administrator shall not supersede any permit previously issued under ~~Article 5A~~ WV Code §22-11. All provisions of both permits shall be in force, except that, in the event of a conflict, the more stringent provisions shall apply. All permits relating to the same facility shall be deemed consolidated and considered as a single permit for the purposes of reporting, administration and enforcement.

3.6.4. Unexpired permits previously issued under ~~Article 5A~~ WV Code §22-11 shall be void whenever a new WV/NPDES permit is issued for the same facility. Any unexpired NPDES permit issued by the EPA shall not be enforceable by the director upon the issuance of a new WV/NPDES permit for the same facility.

3.7. Transition and consolidation of program for WV/NPDES and WVSCMRA permits.

3.7.1. Transition. -- Any WV/NPDES or ~~Article 5A WV Code §22-11~~ permit already in public notice pursuant to ~~Article 5A WV Code §22-11~~ on the original effective date of ~~these regulations~~ this rule (May 30, 1985) shall continue to be processed by the ~~Division Office~~ of Water Resources; however, the director will be the permit issuing authority for any such permit recommended to be issued by the chief of the ~~Division Office~~ of Water Resources.

3.7.2. Consolidation of permit processing.

3.7.2.a. Whenever a facility requires a permit under both WVSCMRA and ~~Article 5A WV Code §22-11~~, processing of two (2) or more applications for those permit may be consolidated.

3.7.2.b. Whenever the permits are jointly noticed, the public hearings under Section 9 of ~~these regulations~~ this rule and informal conferences under WVSCMRA may be held on the same day.

3.7.2.c. The final permits may be issued together. They need not be issued together if, in the judgment of the director, joint issuance would result in unreasonable delay in the issuance of the WV/NPDES permit.

3.7.2.d. Whenever a facility or activity requires additional permits under both of the statutes covered by ~~these regulations~~ this rule, the director may coordinate the expiration date(s) of the new permit(s) with the expiration date(s) of the existing permit(s) so that all permits expire simultaneously subject to the provision of Section 3.5.1 of ~~these regulations~~ this rule. Processing of the subsequent applications for renewal permits may then be consolidated.

3.7.2.e. Any permittee who has either an NPDES, WV/NPDES, or ~~Article 5A WV Code §22-11~~ permit must apply for reissuance in accordance with Section 4.4.1 of ~~these regulations~~ this rule. If such permit expires within eighteen (18) months of the expiration of the WVSCMRA permit then such permit will automatically be given an extension to the expiration date of the surface mining permit: **Provided**, That the permittee complies with Section 3.5.2 of ~~these regulations~~ this rule.

3.7.2.f. Any permittee who has either an NPDES, WV/NPDES, or ~~Article 5A WV Code §22-11~~ permit which will expire within eighteen (18) months after the expiration of a WVSCMRA permit for that facility must apply for the reissuance of the NPDES, WV/NPDES, or ~~Article 5A WV Code §22-11~~ permit when requesting renewal of the surface mining permit pursuant to WVSCMRA.

§47-30-4. Application For Permits.

4.1. Duty to apply. -- Unless covered under a general permit issued in accordance with Section 13 of ~~these regulations~~ this rule, any person discharging pollutants, proposing to discharge pollutants, or proposing to undertake any activity listed in Section 3.1.1 of ~~these regulations~~ this rule who does not have an effective permit for such discharge or activity shall submit a complete application in the manner and form prescribed by the director and in accordance with the provisions of Section 4 of ~~these regulations~~ this rule.

4.2. Responsible party applies. -- When a facility or activity is owned by one person but is operated by another, the operator shall be the applicant. The director may require documentation of the WV/NPDES permit responsibility and liability of the owner and operator and may propose and issue the WV/NPDES permit to the responsible person(s), but only after notice to the responsible person(s), or the director may refuse to issue the WV/NPDES permit until the responsible person applies for the WV/NPDES permit.

4.3. Completeness. -- Any person who requires a WV/NPDES permit shall complete, sign, and submit to the director a WV/NPDES application. An application for a permit is complete when the director receives an application form and any supplemental information including maps, plans, designs, and other application materials which are completed to the director's satisfaction. The completeness of any application for a WV/NPDES permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. The director shall not begin the processing of a permit until the applicant has fully complied with the application requirements.

4.4. Time to apply.

4.4.1. Reissuance. -- Any person with an existing WV/NPDES permit shall submit an application for reissuance of such permit at least one hundred and twenty (120) days before the expiration date of the existing WV/NPDES, NPDES, or ~~Article 5A WV Code §22-11~~ WV Code §22-11 permit.

4.4.2. Permit to abandon. -- Any person proposing to abandon a deep mine facility under ~~W. Va. Code §20-5A-5(b)(6)~~ WV Code §22-11-8(b)(6) and Section 3.1.1.e of ~~these regulations~~ this rule shall apply for an abandonment permit at least one hundred and eighty (180) days prior to sealing of the deep mine. Any person proposing to abandon a surface mine facility under ~~W. Va. Code §20-5A-5(b)(6)~~ WV Code §22-11-8(b)(6) and Section 3.1.1.e of ~~these regulations~~ this rule shall apply for an abandonment permit with a request for Phase II bond release under WVSCMRA.

4.5. Information required from applicants.

4.5.1. Information required from all applicants. -- All applicants for

WV/NPDES permits shall provide the director with a complete application in the manner and on a form prescribed by the director. The form may require information in addition to that specified in Section 4.5 of ~~these regulations~~ this rule.

4.5.1.a. The activities conducted by the applicant which require it to obtain a permit.

4.5.1.b. Name, mailing address, and location of the facility for which the application is submitted.

4.5.1.c. Up to four (4) Standard Industrial Classification (SIC) codes which best reflect the principal products or services provided by the facility.

4.5.1.d. The operator's name, address, telephone number, ownership status, including the name and address of the owner if different, and status as federal, state, private, public, or other entity.

4.5.1.e. All relevant environmental permits necessary for the construction or operation or both of this facility such as dredge and fill permits under CWA Section 404 and permits issued under WVSCMRA.

4.5.1.f. A topographic map drawn to a reasonable scale and extending at least one thousand (1000) feet beyond the site depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

4.5.2. Information required from existing sources. -- All applicants (including all applicants for reissuance) for WV/NPDES permits whose facilities are existing sources shall also provide the following information to the director:

4.5.2.a. Outlet location. -- For each point source, the latitude and longitude to the nearest second and the name of the immediate receiving water and river mile point. For haulroads and on-bench drainage control, the outlet location shall be considered to be the lowest downstream discharge point where water leaving the permit area enters the stream.

4.5.2.b. Line drawing. -- A line drawing of the water flow through the facility with a water balance, showing operations contributing influent to the treatment units and effluent. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under Section 4.5.2.c of ~~these regulations~~ this rule. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If

a water balance cannot be determined the applicant may instead provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

4.5.2.c. Average flows and treatment. -- A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outlet, including process wastewater and storm water runoff (including material storage area runoff), the average flow each process contributes and a description of the treatment, if any, the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms.

4.5.2.d. Intermittent flows. -- If any of the discharges described in Section 4.5.2.c of ~~these regulations~~ this rule are intermittent or seasonal, a description of the frequency, duration, and flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

4.5.2.e. Improvements. -- If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement project, and a listing of the required and projected final compliance dates.

4.5.2.f. Effluent characteristics. -- Information on the discharge of pollutants specified in Sections 4.5.2.f.1 through 4.5.2.f.6 of ~~these regulations~~ this rule. When "quantitative data" (concentration and mass) for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 C.F.R. Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. Grab samples must be used for pH, temperature, cyanide, total phenols, total residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours, and a minimum of one (1) to four (4) grab samples may be taken for storm water discharges depending on the duration of the discharge. One grab sample shall be taken in the first hour (or less) of discharge with one additional grab sample taken in each succeeding hour of discharge up to a minimum of four (4) grab samples for discharges lasting four or more hours. In addition, the director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. When an applicant has two (2) or more outlets with substantially identical effluents the director may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outlet.

4.5.2.f.1. Mandatory testing:

4.5.2.f.1.A. Every applicant must report quantitative data for every outlet for the following pollutants. All levels must be reported as concentration and as total mass except for temperature, pH, and flow.

| | | |
|---|-------------------|--------------------|
| Demand (BOD-5day) | 4.5.2.f.1.A.i. | Biochemical Oxygen |
| Demand (COD) | 4.5.2.f.1.A.ii. | Chemical Oxygen |
| Carbon (TOC) | 4.5.2.f.1.A.iii. | Total Organic |
| Solids (TSS) | 4.5.2.f.1.A.iv. | Total Suspended |
| winter and summer) | 4.5.2.f.1.A.v. | Ammonia (as N) |
| | 4.5.2.f.1.A.vi. | Temperature (both |
| | 4.5.2.f.1.A.vii. | pH |
| | 4.5.2.f.1.A.viii. | Discharge Flow |
| believed present or if sanitary waste is or will be discharged) | 4.5.2.f.1.A.ix. | Fecal Coliform (if |
| Chlorine (if chlorine is used) | 4.5.2.f.1.A.x. | Total Residual |
| | 4.5.2.f.1.A.xi. | Oil and grease. |

4.5.2.f.1.B. The director may waive the testing and reporting requirements for any of the pollutants or flow listed in Section 4.5.2.f.1.A of ~~these regulations~~ this rule if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

4.5.2.f.2. Each applicant contributing to a discharge must report quantitative data for the pollutants listed in Appendix B of ~~these regulations~~ this rule ~~in~~ for each outlet.

4.5.2.f.3. Potentially required testing. -- Each applicant

must indicate whether the applicant knows or has reason to believe that the pollutant is discharged from the outlet (see Section 4.5.2.f.6 of ~~these regulations~~ this rule) and must report for each outlet quantitative data for the following pollutants:

4.5.2.f.3.A. All pollutants listed in Appendix B or Appendix C of ~~these regulations~~ this rule for which quantitative data is not otherwise required under Section 4.5.2.f.2 of ~~these regulations~~ this rule. For every pollutant listed in Appendix B or Appendix C expected to be discharged in concentrations of ten (10) ppb or greater, the applicant must report quantitative data. Where acrolein, acrylonitrile, 2, 4-dinitrophenol, or 2-methyl-4,6-dinitrophenol is expected to be discharged in concentrations of one hundred (100) ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than ten (10) ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. Where acrolein, acrylonitrile, 2,4-dinitrophenol, or 2-methyl-4,6-dinitrophenol is expected to be discharged in concentrations less than one hundred (100) ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying for a small business exemption under Section 4.5.2.g of ~~these regulations~~ this rule is not required to analyze for pollutants listed in Appendix C of ~~these regulations~~ this rule.

4.5.2.f.3.B. All pollutants in Appendix D of ~~these regulations~~ this rule. If an applicable effluent limitations guideline either directly limits the pollutant listed in Appendix D or, by its express terms, indirectly limits the pollutant listed in Appendix D through limitations of an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

4.5.2.f.4. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Appendix E of ~~these regulations~~ this rule are discharged from each outlet (see Section 4.5.2.f.5 of ~~these regulations~~ this rule). For every pollutant listed in Appendix E that is expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

4.5.2.f.5. Each applicant must report quantitative data generated using a screening procedure not calibrated with analytical standards, for TCDD (2,3,7,8-tetrachlorodibenzo-p-dioxin) if:

4.5.2.f.5.A. He uses or manufactures 2, 4, 5,-trichlorophenoxyacetic acid (2,3,5-T); 2-(2,4,5,-trichlorophenoxy) propanoic acid (Silvex or 2,4,5-TP); 2-(2,4,5,-trichlorophenoxy)ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

4.5.2.f.5.B. He knows or has reason to believe that TCDD is or may be present in an effluent.

4.5.2.f.6. The requirements in Sections 4.5.2.f.3 and 4.5.2.f.4 of ~~these regulations~~ this rule that an applicant must provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

4.5.2.g. Small business exemption. -- Coal mines or preparation plants with a probable total annual production of less than one hundred thousand (100,000) tons per year per mine or plant are exempt from the requirements in Section 4.5.2.f.3.A of ~~these regulations~~ this rule to submit quantitative data for the pollutants listed in Appendix C of ~~these regulations~~ this rule.

4.5.2.h. Used or manufactured toxics. -- A listing of any toxic pollutant which the applicant does or expects to use or manufacture as an intermediate or final product or by-product. The director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the director has adequate information to issue the permit.

4.5.2.i. Biological toxicity tests. -- An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

4.5.2.j. Contract analyses. -- If a contract laboratory or consulting firm performed any of the analyses required by Section 4.5.2.f of ~~these regulations~~ this rule, the identity of each laboratory or firm and the analyses performed.

4.5.2.k. Plan for abandonment. -- The information required in a plan for abandonment pursuant to Section 4.5.4 of ~~these regulations~~ this rule.

4.5.2.l. Discharges into noncomplying waters. -- Compliance with Section 4.5.5 of ~~these regulations~~ this rule.

4.5.2.m. Variances. -- Compliance with Sections 4.5.6 and 4.5.7 of ~~these regulations~~ this rule if applicable.

4.5.2.n. Delayed submission. -- In case of reissuance applications, the director may grant permission to submit the information required by Sections 4.5.2.f, 4.5.2.h, and 4.5.2.i of ~~these regulations~~ this rule after the permit expiration date.

4.5.2.o. Additional information. -- In addition to the information reported on the application form, applicants shall provide to the director, at his or her request, such other information as the director may reasonably require to assess the facility and discharges from the facility and to determine whether to issue a WV/NPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity to aquatic life of the discharges and requirements to determine the cause of the toxicity.

4.5.3. Information required for new sources.

4.5.3.a. All applicants for WV/NPDES permits whose facilities are new sources must submit a complete application for a surface mining permit under WVSCMRA and the information required by Sections 4.5.1 and 4.5.2 of ~~these regulations~~ this rule. Incorporation by reference of material supplied in the WVSCMRA application is permissible.

4.5.3.b. Any new source which is applying for a reissuance permit must submit an application consisting of the material required by Sections 4.5.1 and 4.5.2 of ~~these regulations~~ this rule.

4.5.4. Plan for abandonment and application to abandon a mine.

4.5.4.a. Deep mines. -- The plan for abandonment may incorporate information contained in the surface mining permit under WVSCMRA. Unless waived in writing in whole or in part by the director, an applicant for a deep mine under either Section 4.5.2 or 4.5.3 of ~~these regulations~~ this rule shall provide a plan for abandonment which contains the following information:

4.5.4.a.1. A mine map to scale showing among other things:

4.5.4.a.1.A. The proposed mine boundary for the initial five (5) years of the mine and the proposed final limits of mining (to be shown in different colors); thickness of barriers against outcrop;

4.5.4.a.1.B. Any adjacent deep and strip mines and auger holes and the thickness of barriers between the proposed mine and adjacent mine or auger holes;

4.5.4.a.1.C. Predicted final water elevation in the proposed mine;

4.5.4.a.1.D. Water level and its elevation in any adjacent mines;

4.5.4.a.1.E. Seam structural contours at ten (10) feet intervals and surface elevation contours at an interval not to exceed those available on the latest U.S.G.S. 7.5-minute quadrangle, fault plane or weak plane;

4.5.4.a.1.F. Proposed location of all mine seals and sectional dams if any;

4.5.4.a.1.G. All proposed mine portals and boreholes;

4.5.4.a.1.H. Surface and seam elevations of all mine openings;

4.5.4.a.1.I. The north line;

4.5.4.a.1.J. General strike and dip direction of the mineral bed and the average dip.

4.5.4.a.2. If there are mine workings either below or above the mine workings to be abandoned, information on whether they are active, inactive or abandoned; the final limits of mining (to be shown in different colors on the mine map in Section 4.5.4.a.1.A of ~~these regulations~~ this rule); elevation of water pools in these mines; the thickness and nature of parting between the workings; whether water from the mine to be abandoned will flow through the adjacent mines or the mines above or below; and whether water from adjacent mines or mines below or above will flow through the mine to be abandoned and, if it will, the quality of the water.

4.5.4.a.3. The type and number of permanent seals proposed, their design details and drawings, and the materials to be used for construction.

4.5.4.a.4. Whether there will or might reasonably be expected to be a discharge from the mine after abandonment; the maximum rate of discharge expected; whether the discharge, if any, will need treatment; if treatment is required, the type of treatment proposed and its details; and, if treatment will not be required, the reasons for assuming so.

4.5.4.a.5. Provisions that shall be made for assuring acceptable water quality from any discharges after abandonment of the mine. Should the mine become filled with water, the effect on groundwater quality and plans to eliminate or minimize the adverse effects if any on groundwater quality.

4.5.4.a.6. Any other information which the director may deem necessary to evaluate the water pollution potential of the facility.

4.5.4.a.7. The information required in ~~West Virginia~~

Administrative Regulations, Department of Energy, Series 2, Section 7A.04 Office of Mining and Reclamation regulation 38 CSR 2. Section 3.13.

4.5.4.b. Other facilities requiring plans for abandonment. -- For all coal mines other than deep mines, preparation plants, and preparation plant associated areas, the reclamation plan required under ~~Article 6 WV Code §22-3~~ shall be the plan for abandonment.

4.5.4.c. Plan for abandonment; reissuance. -- Unless waived in writing in whole or in part by the director, in addition to the information required by Sections 4.5.1 and 4.5.2 of ~~these regulations~~ this rule, an applicant for the reissuance of a WV/NPDES permit shall provide information to update or add to the information required in Sections 4.5.4.a and 4.5.4.b of ~~these regulations~~ this rule.

4.5.4.d. Application for permit to abandon.

4.5.4.d.1. For deep mines. -- An application for a permit to abandon shall contain the information requested under Sections 4.5.4.a and 4.5.4.b of ~~these regulations~~ this rule updated to show final determinations which reflects current knowledge on each item: **Provided**, That where the information submitted under Sections 4.5.4.a and 4.5.4.b of ~~these regulations~~ this rule has not significantly changed further updating will not be required, and the following:

4.5.4.d.1.A. A statement from the applicant which predicts the likelihood of a discharge from the abandoned mine.

4.5.4.d.1.B. At least one representative cross section map across the coal seam and overburden along a line parallel to the dip of the mineral bed showing the name and thickness of each strata above and the immediate strata below the mineral bed, the position of the water table and the direction of the flow of water, the final likely level of water in the mineral bed on abandonment, and the likely extent of fracturing in the overburden due to mining. The line of cross section shall be shown on the mine map submitted under Section 4.5.4.a of ~~these regulations~~ this rule.

4.5.4.d.1.C. A report on the quality of water being discharged from the mine during the past two (2) years or, if such data is unavailable, then an analysis of current discharge quality and a prediction of expected discharge quality should a discharge occur.

4.5.4.d.2. For facilities other than deep mines, the application for a permit to abandon shall be the application for a Phase II bond release under WVSCMRA.

4.5.5. Discharges into Noncomplying Waters. -- The owner or operator of a

facility proposing to discharge into a water segment which does not meet applicable water quality standards for the pollutants to be discharged or is not expected to meet those standards even after the application of effluent limitations required by CWA Sections 301(b)(2)(A)2, 301(b)(2)(E), or 306, and for which the State has performed a pollutant load allocation for the pollutants to be discharged, must demonstrate before the close of the comment period that either:

4.5.5.a. There are sufficient remaining pollutant load allocations to allow for the discharge; and

4.5.5.b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards; or

4.5.5.c. That the applicant qualifies for an alternate water quality based effluent limitation by making an adequate demonstration to the director pursuant to ~~West Virginia Administrative Regulations, Water Resources Board, Series 1, Section 8~~ West Virginia Environmental Quality Board regulations 46 CSR 1. Section 8.

4.5.6. Variance requests. -- A facility may request a variance from effluent limitations under any of the following statutory or regulatory provisions within the times specified. Requests must explain how the requirements of EPA variance regulations have been met. EPA regulations governing the variances under Sections 4.5.6.a through 4.5.6.d of ~~these regulations~~ this rule are promulgated at 40 C.F.R. Part 125.

4.5.6.a. Fundamentally different factors. -- A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be made by the close of the public comment period under Section 10.2 of ~~these regulations~~ this rule. The request shall explain how the requirements of 40 C.F.R. Part 125, Subpart D have been met.

4.5.6.b. Nonconventional pollutants. -- A request for a variance from the BAT requirements for CWA Section 301(b)(2)(F) pollutants (commonly called "nonconventional" pollutants) pursuant to CWA Section 301(c) because of the economic capability of the owner or operator, or pursuant to CWA Section 301(g) because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

4.5.6.b.1. Submitting an initial request to the Regional Administrator, as well as to the director, stating the name of discharger, the permit number, the outlet number(s), the applicable effluent guideline, and whether the discharger is requesting a CWA Section 301(c) modification or a CWA Section 301(g) modification or both. This request must have been filed not later than two hundred and seventy (270) days after promulgation of an applicable effluent limitation guideline for guidelines promulgated

after December 27, 1977; or

4.5.6.b.2. Submitting a completed request no later than the close of the public comment period under Section 10.2 of ~~these regulations~~ this rule demonstrating that the applicable requirements of 40 C.F.R. Part 125 have been met, unless an extension is granted under Section 4.5.7.b of ~~these regulations~~ this rule.

4.5.6.b.3. Requests for variance from effluent limitations not based on effluent limitation guidelines need only comply with Section 4.5.6.b.2 of ~~these regulations~~ this rule and need not be preceded by an initial request under Section 4.5.6.b.1 of ~~these regulations~~ this rule.

4.5.6.c. Innovative technology. -- An extension under CWA Section 301(k) from the statutory deadline of July 1, 1984 under CWA Section 301(b)(2)(A) for best available technology based on the use of innovative technology may be requested no later than the close of the public comment period under Section 10.2 of ~~these regulations~~ this rule for the discharger's initial permit requiring compliance with CWA Section 301(b)(2)(A). The request shall demonstrate that the requirements of 40 C.F.R. §124.13 and Part 125, Subpart C have been met.

4.5.6.d. Water quality related effluent limitations. -- A modification to any water quality related effluent limitation under CWA Section 302(b)(2) of ~~or requirements~~ under CWA Section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under Section 10.2 of ~~these regulations~~ this rule on the permit from which the modification is sought.

4.5.7. Expedited variance procedures and time extensions.

4.5.7.a. Notwithstanding the time requirements in Section 4.5.6 of ~~these regulations~~ this rule, the director may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variance. In the notice the director may require the applicant as a condition of consideration of any potential variance request to submit information explaining how the requirements applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

4.5.7.b. A discharger who cannot file a complete request required under Section 4.5.6.b.2 of ~~these regulations~~ this rule may request an extension. The extension may be granted or denied at the discretion of the director. Extensions shall be no more than six (6) months in duration.

4.6. Record keeping by applicant. -- Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted for a period of at least three (3) years from the date the application is signed.

4.7. Signatories to permit applications and reports.

4.7.1. Applications. -- All permit applications shall be signed as follows:

4.7.1.a. For a corporation: by a responsible corporate officer. For the purpose of Section 4.7 of ~~these regulations~~ this rule, a responsible corporate officer means:

4.7.1.a.1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

4.7.1.a.2. The manager of one or more manufacturing, production, or operating facilities employing more than two hundred and fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000 in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

4.7.1.b. For a partnership or sole proprietorship: by a general partner or the proprietor.

4.7.2. Reports. -- All reports required by WV/NPDES permits, and other information requested by the director for compliance with ~~Article 5A~~ WV Code §22-11, shall be signed by a person described in Section 4.7.1 of ~~these regulations~~ this rule, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

4.7.2.a. The authorization is made in writing by a person described in Section 4.7.1 of ~~these regulations~~ this rule;

4.7.2.b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, an individual or position having overall responsibility for environmental matters for the company, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

4.7.2.c. The written authorization is submitted to the director.

4.7.3. Changes to authorization. -- If an authorization under Section 4.7.2 of

~~these regulations~~ this rule is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Section 4.7.2 of ~~these regulations~~ this rule must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4.7.4. Certification. -- Any person signing a document under Section 4.7.1 or 4.7.2 of ~~these regulations~~ this rule shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

4.8. Filing fee. -- A filing fee of fifty dollars (\$50) shall be required with all WV/NPDES applications.

§47-30-5. Conditions Applicable To All Permits.

The following conditions apply to all WV/NPDES permits. All conditions shall be incorporated into the WV/NPDES permits either expressly or by reference. If incorporated by reference, a specific citation to ~~these regulations~~ this rule must be given in the permit.

5.1. Duty to comply; penalties.

5.1.1. The permittee must comply with all conditions of a WV/NPDES permit. Permit noncompliance constitutes a violation of CWA and ~~Article 5A WV Code §22-11-1 et seq~~ and is grounds for enforcement action; for WV/NPDES permit modification, suspension or revocation; or for denial of a WV/NPDES permit reissuance application.

5.1.2. The permittee shall comply with all effluent standards or prohibitions established under CWA Section 307(a) for toxic pollutants within the time provided in the regulations that establish ~~these standards~~ or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5.1.3. The Clean Water Act and ~~Article 5A WV Code §22-11~~ provide that any person who violates a permit condition implementing CWA Sections 301, 302, 306, 307,

308, 318 or 405, or any provision of a WV/NPDES permit, or any rule or regulation promulgated under ~~Article 5A WV Code §22-11~~, is subject to a civil penalty not to exceed ten thousand dollars (\$10,000) per day of such violation. Any person who willfully or negligently violates ~~permit conditions implementing CWA Sections 301, 302, 306, 307, or 308, or any provision of Article 5A WV Code §22-11~~, or a WV/NPDES permit, is subject to a fine of not less than two thousand and five hundred dollars (\$2,500) per day of violation nor more than twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment for not more than one (1) year, or both.

5.1.4. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under a WV/NPDES permit shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than six (6) months per violation, or both.

5.1.5. The Clean Water Act and ~~Article 5A WV Code §22-11~~ provide that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than six (6) months per violation, or by both.

5.1.6. The discharge or discharges covered by a WV/NPDES permit are to be of such quality so as not to cause violation of applicable water quality standards adopted by the ~~State Water Resources Board~~ West Virginia Environmental Quality Board. Further, any activities covered under a WV/NPDES permit shall not lead to pollution of the groundwater of the State as a result of the disposal or discharge of such wastes covered herein.

5.1.7. Nothing in Section 5.1 of ~~these regulations~~ this rule shall be construed to limit or prohibit any other authority the director may have under ~~Article 5A or Article 6 WV Code §§22-11 or 22-3 of the West Virginia Code~~, or to relieve the permittee from any responsibilities, liabilities or penalties for not complying with ~~West Virginia Administrative Regulations, Water Resources Board, Series 1 and 3, West Virginia Environmental Quality Board regulation 46 CSR 1 and the Office of Water Resources regulation 47 CSR 11.~~

5.2. Duty to reapply. -- If the permittee wishes to continue an activity regulated by the WV/NPDES permit after the expiration date of the permit, the permittee must apply for a new permit at least one hundred and twenty (120) days prior to expiration of the permit.

5.3. Duty to halt or reduce activity not a defense. -- Upon reduction, loss, or failure of the treatment facility the permittee shall, to the extent necessary to maintain compliance with the WV/NPDES permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power to the treatment facility fails or is

reduced or lost. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

5.4. Duty to mitigate. -- The permittee shall take all reasonable steps to minimize, correct, or prevent any discharge in violation of the WV/NPDES permit which has a reasonable likelihood of adversely affecting human health or the environment.

5.5. Proper operation and maintenance. -- The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the WV/NPDES permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

5.6. Permit actions. -- The WV/NPDES permit may be modified, reissued, suspended, or revoked for cause (see Section 8 of ~~these regulations~~). The filing of a request by the permittee for a permit modification, reissuance, termination or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5.7. Transfer. -- The WV/NPDES permit is not transferable to any person except after notice to the director and by following one of the procedures listed in Section 3.5.3 of ~~these regulations~~ this rule.

5.8. Property rights. -- The WV/NPDES permit does not convey any property rights of any sort nor any exclusive privilege.

5.9. Duty to provide information. -- The permittee shall furnish to the director, within a specified time, any information which the director may request to determine whether cause exists for modifying reissuing, suspending, or revoking the WV/NPDES permit, or to determine compliance with the permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by the permit.

5.10. Inspection and entry. -- The permittee shall allow the director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

5.10.1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the WV/NPDES permit;

5.10.2. Have access to and copy at reasonable times, any records that

must be kept under the conditions of the permit;

5.10.3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

5.10.4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by ~~Article 5A~~ WV Code §22-11, any substances or parameters at any location.

5.11. Monitoring and records.

5.11.1. Monitoring must be conducted according to test procedures approved under 40 C.F.R. Part 136, unless other test procedures have been specified in the WV/NPDES permit.

5.11.2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

5.11.3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recording for continuous monitoring instrumentation, copies of all reports required by the WV/NPDES permit, and records of all data used to complete the application for the permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the director at any time.

5.11.4. Records of monitoring information shall include:

5.11.4.a. The date, exact place, and time of sampling or measurements;

5.11.4.b. The individual(s) who performed the sampling or measurements;

5.11.4.c. The date(s) analyses were performed;

5.11.4.d. The individual(s) who performed the analyses; if a commercial laboratory is used, the name and address of the laboratory;

5.11.4.e. The analytical techniques or methods used; and

5.11.4.f. The results of such analyses.

5.11.4.g. This information need not be submitted to the director,

unless requested, but should be retained in accordance with Section 5.11.3 of ~~these regulations~~ this rule.

5.11.5. Monitoring results shall be reported on DMRs and at the intervals specified in the permit. DMR's should be sent to the person designated in the permit so that they are received no later than twenty (20) days following the end of the reporting period.

5.11.6. If the permittee monitors any pollutant at any monitoring point specified in the permit more frequently than required by the permit, using approved test procedures under 40 C.F.R. Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

5.11.7. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the director in the permit.

5.12. Signatory Requirement. -- All applications, reports, or information submitted to the director shall be signed and certified as required in Section 4.7 of these regulations.

5.13. Reporting requirements.

5.13.1. Planned changes. -- The permittee shall give notice to the director as soon as possible but not later than thirty (30) days prior to any planned physical alterations or additions to the permitted facility and of any planned changes in the method of operating the facility which may affect the nature or quantity of the discharge, or qualify that facility for designation as a new source under Section 2.30 of ~~these regulations~~ this rule.

5.13.2. Anticipated noncompliance. -- The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

5.13.3. Compliance schedules. -- Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen (14) days following each schedule date.

5.13.4. Immediate reporting.

5.13.4. a. The permittee shall report any noncompliance with the WV/NPDES permit or ~~Article 5A WV Code §22-11~~ which may endanger health or the environment immediately but not later than twenty-four (24) hours after becoming aware of the circumstances by using the ~~Division Office~~ Office of Water Resources' Emergency Notification

Number 1-800-642-3074 or the ~~Department of Energy's~~ Division of Environmental Protection's Emergency Notification Number 1-800-654-3312. A written submission shall be provided to the person designated in the permit within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time the noncompliance is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

5.13.4.b. The following shall also be reported immediately but not later than twenty-four (24) hours after:

5.13.4.b.1. Any unanticipated bypass (see Section 5.14.1 of ~~these regulations~~ this rule) which exceeds any effluent limitation in the permit;

5.13.4.b.2. Any spill or accidental discharge (upset), as defined in Section 5.15 of ~~these regulations~~ this rule, shall be reported to the director via the ~~Division Office~~ Office of Water Resources' Emergency Notification Number 1-800-642-3074 or the ~~Department of Energy's~~ Division of Environmental Protection's Emergency Notification Number 1-800-654-3312. Such notification shall set forth the time and place of such spill or discharge, type and quantities of pollutants, any actions taken to stop or mitigate the spill or accidental discharge, and any other information as may be requested. A written verification of such notification shall be submitted upon request of the person designated in the permit.

5.13.4.b.3. Violation of a maximum daily discharge limitation for any of the pollutants which the director has required in the permit to be reported immediately.

5.13.4.c. The director may waive the written report required under Section 5.13.4.b of ~~these regulations~~ this rule on a case-by-case basis if the oral report has been received in accordance with the above.

5.13.4.d. Notification Levels. -- The permittee must notify the director in writing as soon as they know or have reason to believe:

5.13.4.d.1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

5.13.4.d.1.A. One hundred micrograms per liter
(100 $\mu\text{g}/\text{l}$);

5.13.4.d.1.B. Two hundred (200) micrograms per liter

(200 ug/l) for acrolein and acrylonitrile; five hundred (500) micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

5.13.4.d.1.C. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.5.2.f of ~~these regulations~~ this rule; and

5.13.4.d.1.D. The level established by the director in accordance with Section 6.2.8 of ~~these regulations~~ this rule.

5.13.4.d.2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

5.13.4.d.2.A. Five hundred (500) micrograms per liter (500 ug/l);

5.13.4.d.2.B. One milligram per liter (1 mg/l) for antimony;

5.13.4.d.2.C. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.5.2.f of ~~these regulations~~ this rule; or

5.13.4.d.2.D. The level established by the director in accordance with Section 6.2.8 of ~~these regulations~~ this rule.

5.13.4.d.3. That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under Section 4.5.2.h of ~~these regulations~~ this rule.

5.13.5. Other noncompliance. -- The permittee shall report all instances of noncompliance not reported under Sections 5.11.5, 5.11.6, 5.11.7, 5.13.3, and 5.13.4 of ~~these regulations~~ this rule at the time monitoring reports are submitted. The reports shall contain the information listed in Section 5.13.4.a of ~~these regulations~~ this rule.

5.13.6. Net limitations. -- If net limitations are established, then the permittee shall notify the director if eligibility for such limitations has been altered or no longer exists.

5.13.7. Other information. -- Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information

in a permit application or in any report to the director, it shall promptly submit such facts or information.

5.14. Bypass.

5.14.1. Definitions.

5.14.1.a. "Bypass" means the intentional temporary diversion of waste streams from any portion of a treatment facility; and

5.14.1.b. "Severe Property Damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

5.14.2. Bypass not exceeding limitations. -- The permittee may allow any bypass to occur, for reasons other than sediment control, which does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Sections 5.14.3 and 5.14.4 of ~~these regulations~~ this rule.

5.14.3. Notice.

5.14.3.a. Anticipated bypass. -- If the permittee knows in advance of the need for a bypass, he or she shall submit prior written notice, if possible, at least ten (10) days before the date of the bypass;

5.14.3.b. Unanticipated bypass. -- If the permittee does not know in advance of the need for a bypass, notice shall be submitted as required in Section 5.13.4 of ~~these regulations~~ this rule.

5.14.4. Prohibition of bypass exceeding limitations.

5.14.4.a. Bypass exceeding limitations is permitted only under the following conditions, and the director may take enforcement action against a permittee for bypass, unless:

5.14.4.a.1. Bypass exceeding limitations was unavoidable to prevent loss of life, personal injury, or severe property damage;

5.14.4.a.2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate

backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

5.14.4.a.3. The permittee submitted notices as required under Section 5.14.3 of ~~these regulations~~ this rule.

5.14.5. Approval of bypass exceeding limitations. -- The director may approve an anticipated bypass exceeding limitations, after considering its adverse effects, if the director determines that it will meet the three conditions listed in Section 5.14.4.a of ~~these regulations~~ this rule.

5.15. Upset.

5.15.1. Definition. -- "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

5.15.2. Effect of an upset. -- An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section 5.15.3 of ~~these regulations~~ this rule are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

5.15.3. Conditions necessary for a demonstration of upset. -- A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

5.15.3.a. An upset occurred and that the permittee can identify the cause(s) of the upset;

5.15.3.b. The permitted facility was at the time being properly operated;

5.15.3.c. The permittee submitted notice of the upset as required in Section 5.13.4.b.2 of ~~these regulations~~; and 5.15.3.d of this rule. The permittee complied with any remedial measures required under Section 5.4 of ~~these regulations~~ this rule.

5.15.4. Burden of proof. -- In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5.16. Reopener clause. -- In accordance with ~~W. Va. Code §20-5A-14~~ WV Code §22-11-20, the director may reopen the WV/NPDES permit through modification or by reissuance to incorporate an applicable effluent standard or limitation under CWA Sections 301(b)(2)(C) and ~~W. Va. Code §20-5A-7(b)~~ WV Code §22-11-11(b) (Water Quality Based Effluent Limitations and Standards), CWA Section 301(b)(2)(D) (Toxics), CWA Section 304(b)(2) (Best Available Treatment) and CWA Section 307(a)(2) (Toxics), which is promulgated or approved after the WV/NPDES permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit.

5.17. Removed substances. -- Where removed substances are not otherwise covered by the terms and conditions of the WV/NPDES permit or other existing permit issued by the ~~Department~~ Division, any solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters and which are intended for disposal within the State shall be disposed of only in a manner and at a site subject to the approval by the ~~Department~~ Division. If such substances are intended for disposal outside the State or for reuse (that is, as a material used for making another product, which in turn has another use), the permittee shall notify the ~~Department~~ Division in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, the intended place of disposal or use, as appropriate, and shall take reasonable measures to ensure that the use does not cause pollution of the waters of the State.

5.18. New sources.

5.18.1. ~~he~~ The owner or operator of a new source or a recommencing discharger shall install and have in operating condition, and shall "start up" all pollution control equipment required to meet the conditions of the WV/NPDES permit before beginning to discharge.

5.18.2. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

5.18.3. Any new source classified as such under previous EPA regulations may, notwithstanding Section 8 of ~~these regulations~~ this rule, apply to have the WV/NPDES permit modified to incorporate the revised new source performance standards.

5.18.4. When a WV/NPDES permit is issued to a new source, the protection period of Section 12.2.1 of ~~these regulations~~ this rule shall apply. After expiration of such protection period, the permittee must immediately comply with any more stringent technology-based limitations promulgated under CWA Section 301. If, however, the more stringent technology-based limitations are promulgated less than three (3) years before the expiration of the WV/NPDES permit, then the permittee has three (3) years from the date of their promulgation to comply with such stricter limits.

5.19. Definitions. -- When used in WV/NPDES permits, the definitions of Section 2 of ~~these regulations~~ this rule shall apply and the following terms shall mean:

5.19.1. "Daily Average Fecal Coliform Bacteria" means the geometric average of all samples collected during the month.

5.19.2. "Measured Flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.

5.19.3. "Composite Sample" means a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates or the sampling interval (for constant volume samples) is proportional to the flow rates over the time period used to produce the composite. The maximum time period between individual samples shall be two (2) hours.

5.19.4. "Grab Sample" means an individual sample collected in less than fifteen (15) minutes.

§47-30-6. Establishing WV/NPDES Permit Conditions.

6.1. General. -- In addition to conditions required in all WV/NPDES permits, the director shall establish conditions in WV/NPDES permits, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of CWA, ~~Article 5A WV Code §22-11~~, and Section 6 of ~~these regulations~~ this rule.

6.1.1. An applicable requirement is a State or federal or interstate compact, statutory, or regulatory requirement which takes effect prior to final administrative disposition of a permit, or is any requirement which takes effect prior to final administrative disposition and is also any requirement which takes effect prior to the modification or reissuance of a permit. Section 10.2.2 of ~~these regulations~~ this rule provides a means for reopening a WV/NPDES permit proceeding at the discretion of the director where new requirements become effective during the permitting process. An applicable requirement is also any requirement which takes effect prior to a modification or reissuance of a permit.

6.2. Effluent limitations. -- Each WV/NPDES permit shall include conditions meeting the following requirements when applicable:

6.2.1. Technology based effluent limitations and standards for existing sources based on effluent limitation guidelines and standards under CWA Section 301 or new source performance standards promulgated under CWA Section 306, or case-by-case effluent limitations determined under CWA Section 402(a)(1) (Best Professional Judgment or BPJ), or a combination of the two (2) in accordance with 40 C.F.R. Part 125. For new sources or new discharges, these technology-based limitations and standards are subject to the provisions

of Section 12 of ~~these regulations~~ this rule (Protection Period).

6.2.2. Other effluent limitations and standards under CWA Sections 301, 302, 303, 307, and 318. -- If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA Section 307(a) for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the director shall institute proceedings under ~~these regulations~~ this rule to modify or reissue the permit to conform to the toxic effluent standard or prohibition.

6.2.3. Water quality standards. -- Any more stringent requirements necessary to achieve water quality standards established pursuant to CWA or ~~Article 5A WV Code §22-11~~ or regulations promulgated thereunder, including requirements of other affected states; or to attain or maintain a specified water quality related effluent limit established under CWA Section 302.

6.2.4. Modified Effluent Limitation for Coal Remining Operations. -- The Director may issue an NPDES Permit which modifies the effluent limitations for iron, manganese, or pH of any pre-existing discharge from the remined area of any coal remining operation or of any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment. The specific numerical effluent limitation in each permit shall be in accordance with the West Virginia Division of Environmental Protection's Coal Remining Policy issued on September 30, 1993, as amended. Total Hot Acidity will be used in lieu of pH in the establishment of the effluent limitation (loading).

~~6.2.4.~~ 6.2.5. Reopener clause. -- Any WV/NPDES permit issued shall include effluent limitations to meet the requirements of CWA Sections 301(b)(2)(A), 301(b)(2)(C), 301(b)(2)(D), 301(b)(2)(E), and 301(b)(2)(F), whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits shall also include a reopener condition (see Section 5.16 of ~~these regulations~~ this rule) stating that, if an applicable standard or limitation is promulgated under CWA Sections 301(b)(2)(C), 301(b)(2)(D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit may be modified or revoked and reissued to conform to that effluent standard or limitation.

~~6.2.5.~~ 6.2.6. Water quality management plans. -- Any requirements necessary to ensure consistency with the requirements of a water quality management plan approved by EPA under CWA Section 208(b).

~~6.2.6.~~ 6.2.7. Alternate Limits that incorporate alternate effluent limitations or standards where warranted by "fundamentally different factors" under 40 C.F.R. Part 125, Subpart D (see Section 4.5.6 of ~~these regulations~~ this rule).

~~6.2.7.~~ 6.2.8. Toxic pollutants limitations established under Sections 6.2.1, 6.2.2, or 6.2.3 of ~~these regulations~~ this rule, to control pollutants meeting the criteria listed in Section ~~6.2.7.a.~~ 6.2.8.2.a. of ~~these regulations~~ this rule. Limitations will be established in accordance with Section ~~6.2.7.b.~~ 6.2.8.b. of ~~these regulations~~ this rule. An explanation of the development of these limitations shall be included in the fact sheet.

~~6.2.7.a.~~ 6.2.8.a. Limitations must control all toxic pollutants which:

~~6.2.7.a.1~~ 6.2.8.a.1. The director determines, based on information reported in a permit application under Sections 4.5.2.f and 4.5.2.h of ~~these regulations~~ this rule or in a notification under Section 5.13.4.d of ~~these regulations~~ this rule or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or

~~6.2.7.a.2~~ 6.2.8.a.2. The discharger does or may use or manufacture as an intermediate, final product, or by-product.

~~6.2.7.b.~~ 6.2.8.b. The requirement that the limitations control the pollutants meeting the criteria of Section ~~6.2.7.a.~~ 6.2.8.a. of ~~these regulations~~ this rule will be satisfied by:

~~6.2.7.b.1~~ 6.2.8.b.1. Limitations on those pollutants; or

~~6.2.7.b.2.~~ 6.2.8.b.2. Limitations on other pollutants which, in the judgment of the director, will provide the necessary treatment of the pollutants.

~~6.2.8.~~ 6.2.9. Notification level. -- A "notification level" which exceeds the notification level of Section 5.13.4.d of ~~these regulations~~ this rule, upon a petition from the permittee or on the director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

~~6.2.9.~~ 6.2.10. Immediate reporting. -- Pollutants for which the permittee must report violations of maximum daily discharge limitations under Section 5.13.4.b.3 of ~~these regulations~~ this rule shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or a pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

~~6.2.10.~~ 6.2.11. Monitoring requirements. -- In addition to the requirements of Section 5.11 of ~~these regulations~~ this rule, all WV/NPDES permits shall specify:

~~6.2.10.a.~~ 6.2.11.a. Requirements concerning the proper use,

maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods);

~~6.2.10.b.~~ 6.2.11.b. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

~~6.2.10.c.~~ 6.2.11.c. Applicable reporting requirements based upon the impact of the regulated activity and as specified in Section ~~6.2.10.d.~~ 6.2.11.d. of ~~these regulations this rule.~~ Reporting shall be no less frequent than specified in the Section ~~6.2.10.e.~~ 6.2.11.e. of ~~these regulations this rule.~~

~~6.2.10.d.~~ 6.2.11.d. To assure compliance with permit limitations, requirements to monitor:

~~6.2.10.d.1.~~ 6.2.11.d.1. The volume of effluent discharged from each outlet;

~~6.2.10.d.2.~~ 6.2.11.d.2. Other measurements as appropriate, including pollutants in internal waste streams under Section 7.8 of ~~these regulations this rule;~~ pollutants in intake water for net limitations under Section 7.7 of ~~these regulations this rule;~~ frequency rate of discharge for noncontinuous dischargers under Section 7.4 of ~~these regulations this rule;~~ and pollutants subject to notification requirements under Section 5.13.4.d of ~~these regulations this rule.~~

~~6.2.10.e.~~ 6.2.11.e. Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

~~6.2.11.~~ 6.2.12. Best Management Practices to control or abate the discharge of pollutants when:

~~6.2.11.a.~~ 6.2.12.a. Authorized under CWA Section 304(e) for the control of toxic pollutants and hazardous substances from ancillary activities; or

~~6.2.11.b.~~ 6.2.12.b. Numeric effluent limitations are infeasible; or

~~6.2.11.c.~~ 6.2.12.c. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of CWA.

~~6.2.12.~~ 6.2.13. Reissued permits.

~~6.2.12.a.~~ 6.2.13.a. Except as provided in Section ~~6.2.12.b.~~ 6.2.13.b. of ~~these regulations this rule,~~ when a permit is reissued, interim limitations, standards, or

conditions shall be set which are at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance.

~~6.2.12.b.~~ 6.2.13.b. When effluent limitations were imposed under CWA Section 402 (a)(1) in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, the provisions of Section ~~6.2.12.a~~ 6.2.13.a of these regulations this rule shall apply unless:

~~6.2.12.b.1.~~ 6.2.13.b.1. The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines);

~~6.2.12.b.2.~~ 6.2.13.b.2. The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (CWA Section 301(b)(2)(E));

~~6.2.12.b.3.~~ 6.2.13.b.3. The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance; or

~~6.2.12.b.4.~~ 6.2.13.b.4. There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased production and raw waste loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

~~6.2.13.~~ 6.2.14. Navigation. -- Any conditions that the Secretary considers necessary to ensure that navigation and anchorage will not be substantially impaired.

~~6.2.14.~~ 6.2.15. Schedules of compliance. -- The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA, ~~Article 5A WV Code §22-11~~, and ~~regulations~~ rules promulgated thereunder.

~~6.2.14.a.~~ 6.2.15.a. Any schedules of compliance for existing sources shall require compliance as soon as possible, but in no case later than the applicable statutory deadline: July 1, 1984 for technology-based limits under CWA Section 301(b)(1)(B); July 1, 1977 for water quality based effluent limits under CWA Section 301 (b)(1)(C); or July 1,

1987 or three (3) years after promulgation for control of a toxic pollutant under CWA Section 307(a)).

~~6.2.14.b.~~ ~~6.2.15.b.~~ The first WV/NPDES permit issued to a new source or a recommencing discharger may contain a schedule of compliance under the provisions of Section ~~6.2.14~~ ~~6.2.15~~ of ~~these regulations~~ this rule. Any first time WV/NPDES permit issued to a new source or recommencing discharge shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three (3) years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three (3) years before recommencement of discharge.

~~6.2.14.e.~~ ~~6.2.15.c.~~ Interim dates. -- Any permit may contain a schedule of compliance for completion of interim requirements and require submission of reports detailing progress toward completion of such interim requirements. If a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interim requirements (for example, actions, operations, or milestone events) and the dates for their achievement, but the time between interim dates shall not exceed one (1) year.

~~6.2.14.d.~~ ~~6.2.15.d.~~ If the time necessary for completion of any interim requirement is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

~~6.2.14.e.~~ ~~6.2.15.e.~~ Reporting. -- The permit shall be written to require that no later than fourteen (14) days following each interim date and the final compliance date, the permittee shall notify the director in writing of its compliance or noncompliance with the interim or final requirements or submit progress reports if the provisions of Section ~~6.2.4~~ ~~6.2.5~~ of ~~these regulations~~ this rule are applicable.

§47-30-7. Calculating WV/NPDES Conditions.

7.1. Outlets and discharge points. -- All permit effluent limitations, standards, and prohibitions shall be established for each outlet or discharge point of the permitted facility, except as otherwise provided under Section ~~6.3.11.b~~ and Section 7.8 of ~~these regulations~~ this rule. Where a person has a number of outlets emerging into the waters of this State in close proximity to one another, such outlets may be treated as a unit for the purposes of Section 7 of ~~these regulations~~ this rule.

7.2. Metals. -- All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of the "total recoverable metal" as defined in 40 C.F.R. Part 136

unless:

7.2.1. An applicable effluent standard or limitation has been promulgated under CWA and specifies the limitation for the metal in the dissolved or valent form;

7.2.2. In establishing permit limitations on a case-by-case basis, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of CWA; or

7.2.3. All approved analytical methods for the metal inherently measures its dissolved form.

7.3. Continuous discharges. -- For all continuous discharges, all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall be stated as maximum daily and average monthly discharge limitations.

7.4. Noncontinuous discharges. -- Discharges which are not continuous shall be particularly described and limited, considering the following factors, as appropriate:

7.4.1. Frequency;

7.4.2. Total mass;

7.4.3. Maximum rate of discharge of pollutants during the discharge; and

7.4.4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

7.5. Mass limitations. -- Any pollutants limited in terms of mass additionally may be limited in terms of other units of measurement and the permit shall require the permittee to comply with both limitations.

7.6. Pollutants in intake water. -- Except as provided in Section 7.7 of ~~these regulations~~ this rule, effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

7.7. Net limitations.

7.7.1. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

7.7.1.a. The applicable effluent limitations and standards contained in 40 C.F.R. Subchapter N specifically provide that they shall be applied on a net basis; or

7.7.1.b. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

7.7.2. Credit for generic pollutants such as biochemical oxygen demand or total suspended solids should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

7.7.3. Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

7.7.4. Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The director may waive this requirement if he finds that no environmental degradation will result.

7.7.5. The provisions of Section 7.7 of ~~these regulations~~ this rule do not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

7.8. Internal waste streams.

7.8.1. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances the monitoring requirements under Section 5.11 of ~~these regulations~~ this permit shall also be applied to the internal waste streams.

7.8.2. Limits on internal waste streams will be imposed only when the fact sheet under Section 11 of these regulations sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, a point that is beneath ten (10) meters of water), the wastes at the point of discharge are so diluted as to make monitoring impractical, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

7.9. Disposal of pollutants into wells, underground mines, or by land application.

7.9.1. Calculations of effluent limitations (general). -- When part of a discharger's process wastewater is not being discharged into surface waters of the State because it is disposed into a well, underground mine or by land application thereby reducing

the flow or level of pollutants being discharged into surface waters of the State, the director may establish limits on the concentration and quantity of such discharge and applicable effluent standards and the limitations for the surface discharge in a WV/NPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal.

7.9.2. Calculations of effluent limitations (specified). -- The provisions of Section 7.9.1 of ~~these regulations~~ this rule shall not apply to the extent that promulgated effluent limitations guidelines specify a different specific technique for adjusting effluent limitations to account for well injection underground, mine disposal, or land application.

7.9.3. The provisions of Section 7.9.1 of ~~these regulations~~ this rule do not alter a discharger's obligation to meet any more stringent requirements established under Section 5 or 6 of ~~these regulations~~ this rule.

§47-30-8. Modification, Reissuance, Suspension, And Revocation Of Permits.

8.1. General.

8.1.1. WV/NPDES permits may be modified, reissued, suspended, or revoked either at the request of any interested person (including the permittee) or upon the director's initiative. However, permits may be modified, reissued, suspended, or revoked only for the reasons specified in Section 8 of ~~these regulations~~ this rule. All requests shall be submitted to the director in writing and shall contain facts or reasons supporting the request. The director may require additional information, and in the case of a major modification, may require submission of an updated permit application.

8.1.2. If the director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, suspension, or revocation are not subject to public notice, comment, or hearings.

8.2. Modifications.

8.2.1. General. -- All requests for modification shall be submitted in writing to the director citing facts or reasons supporting the request for modification and indicating under which section of ~~these regulations~~ this rule the request is made. The director may request additional information and may require the submission of an updated permit application. When a permit modification is requested, only the conditions subject to modification are reopened. All other conditions of the permit shall remain in effect for the duration of the permit.

8.2.2. If the director tentatively decides to modify a permit and the modification is made under Section 8.2.3.b of ~~these regulations~~ this rule, he or she shall prepare a draft permit under Section 10.1 of ~~these regulations~~ this rule, follow the public

notice procedures in Section 10.2 of ~~these regulations~~ this rule, and shall follow the procedural requirements in ~~Section 8 of Article 5A WV Code §22-11-12~~. The draft permit shall fulfill the requirement of notice under ~~Section 8 of Article 5A WV Code §22-11-12~~. When a draft permit is prepared for the modification, only those conditions to be modified shall be reopened when a new draft permit is prepared.

8.2.3. Causes for modification.

8.2.3.a. Minor modifications. -- Upon the consent of the permittee, the director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in Sections 8.2.3.a.1 through 8.2.3.a.10 of ~~these regulations~~ this rule without preparing a draft permit under Section 10.1 of ~~these regulations~~ this rule, or following the procedures of Section 10 or 11 of ~~these regulations~~ this rule or the procedures in ~~Section 8 of Article 5A WV Code §22-11-12~~. Minor modifications may:

8.2.3.a.1. Correct typographical errors.

8.2.3.a.2. Require more frequent monitoring or reporting by the permittee.

8.2.3.a.3. Change an interim compliance date in a schedule of compliance: **Provided**, That the new date is not more than one hundred and twenty (120) days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement.

8.2.3.a.4. Allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary: **Provided**, That any forms prescribed by the director, including a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees, have been submitted to the director.

8.2.3.a.5. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.

8.2.3.a.6. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

8.2.3.a.7. Allow disposal system equipment substitution when the substituted equipment would not alter the degree of treatment required by the permit.

8.2.3.a.8. Allow rerouting of discharging lines when the

proposed to be or are being discharged.

11.2.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions.

11.2.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified.

11.2.5. A description of the procedures for reaching a final decision on the draft permit including:

11.2.5.a. The beginning and ending dates of the comment period under Section 10.2 of ~~these regulations~~ this rule and the address where comments will be received;

11.2.5.b. Procedures for requesting a hearing and the nature of that hearing; and

11.2.5.c. Any other procedures by which the public may participate in the final decision.

11.2.6. Name and phone number of a person to contact for additional information.

11.2.7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

11.2.8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

11.2.8.a. Limitations to control toxic pollutants under Section ~~6.2.7~~ 6.2.8 of ~~these regulations~~ this rule;

11.2.8.b. Limitations on internal waste streams under Section 7.8 of ~~these regulations~~ this rule; or

11.2.8.c. Limitations on indicator pollutants under 40 C.F.R. §125.3(g).

11.2.8.d. Limitations set on a case-by-case basis under 40 C.F.R. §125.3(c)(2) or §125.3(c)(3).

11.2.8.e. When appropriate, a sketch or detailed description of the location of the discharge described in the application.

§47-30-12. New Sources.

12.1. Definitions. -- For the purpose of Section 12 of ~~these regulations~~ this rule:

12.1.1. "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

12.1.2. "Facilities" or "Equipment" means buildings, structures, or process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

12.2. Effect of compliance with new source performance standards.

12.2.1. Except as provided in Section 12.2.2 of ~~these regulations~~ this rule, any new source which meets the applicable new source performance standards promulgated before the commencement of discharge may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under CWA Section 301(b)(2) for the shortest of the following periods:

12.2.1.a. Ten (10) years from the date that construction is completed;
or

12.2.1.b. Ten (10) years from the date the source begins to discharge process or other nonconstruction related wastewater; or

12.2.1.c. The period of depreciation or amortization of the facility for the purposes of Section 167 or Section 169 or both of the United States Internal Revenue Code of 1954.

12.2.2. The protection from more stringent standards of performance afforded by Section 12.2.3.a of ~~these regulations~~ this rule does not apply to:

12.2.2.a. Additional or more stringent permit conditions which are not technology-based (for example, conditions based on water quality standards or toxic effluent standards or prohibitions under CWA Section 307(a)); or

12.2.2.b. Additional permit conditions controlling pollutants listed as toxic under CWA Section 307(a) or as hazardous substances under CWA Section 311 and which

are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances; or

12.2.2.c. Existing sources which modify their pollution control facilities and achieve performance standards but which are not new sources or otherwise do not meet the requirements of this paragraph.

12.2.3. When a WV/NPDES permit is issued to a source with a "protection period" under Section 12.2.1 of ~~these regulations~~ this rule which will expire on or after the expiration of the protection period, such permit shall require the owner or operator of the source to comply with the requirements of CWA Section 301 and any other applicable CWA requirements immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed except when necessary to achieve compliance with requirements promulgated less than three (3) years before the expiration of the protection period.

12.2.4. The owner or operator of a new source or a recommencing discharger shall install and have in operating condition and shall "start up" all pollution control equipment required to meet the conditions of the WV/NPDES permit before beginning to discharge. Within the shortest feasible time, not to exceed thirty (30) days, the permittee must meet all permit conditions. These requirements do not apply if the owner or operator is issued a permit containing a compliance schedule under Section ~~6.2.14.b of these regulations~~ 6.2.15 of this rule.

12.2.5. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

12.3. Criteria for new source determination.

12.3.1. A preparation plant or associated area, except as otherwise provided, is a "new source" if it meets the definition of "new source" in Section 2.30 of ~~these regulations~~ this rule, and

12.3.1.a. Is constructed at a site at which no other source is located;
or

12.3.1.b. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

12.3.1.c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent,

the director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

12.3.2. A source meeting the requirements of Section 12.3.1.c of ~~these regulations~~ this rule is a new source only if a new source performance standard is independently applicable to it.

12.3.3. Construction on a site at which an existing source is located results in a modification subject to Section 8.2.3.b of ~~these regulations~~ this rule rather than in a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section 12.3.1.b or Section 12.3.1.c of ~~these regulations~~ this rule but otherwise alters, replaces, or adds to existing process or production equipment.

12.3.4. Construction of a new source as defined under Section 2.30.3 of ~~these regulations~~ this rule has commenced if the owner or operator has:

12.3.4.a. Begun or caused to begin as part of continuous on-site construction program;

12.3.4.a.1. Any placement, assembly, or installation of facilities or equipment; or

12.3.4.a.2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

12.3.4.b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with a reasonable time. Options to purchase or contract which can be terminated or modified without a substantial loss, and contracts for feasibility engineering, and design studies do not constitute such a contractual obligation.

12.4. Modification of NPDES Permits for New Sources. -- Any new source classified as such under previous EPA regulations may, notwithstanding Section 8 of ~~these regulations~~ this rule, apply to have its WV/NPDES permit modified to incorporate the revised new source performance standards.

§47-30-13. General Permits.

13.1. Coverage. -- The director may issue a general permit in accordance with the following:

13.1.1. Area. -- The general permit may be written ~~(10)~~ to cover a category

of discharges described in the permit under Section 13.1.2 of ~~these regulations~~ this rule, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

- 13.1.1.a. Designated planning areas under CWA Sections 208 and 303;
- 13.1.1.b. City, county, or state political boundaries;
- 13.1.1.c. State highway systems;
- 13.1.1.d. Standard metropolitan statistical area as defined by the U.S. Office of Management and Budget;
- 13.1.1.e. Any other appropriate division or combination of boundaries.

13.1.2. Sources. -- The general permit may be written to regulate, within the area described in Section 13.1.1 of ~~these regulations~~ this rule, a category of point sources from coal mines, preparation plants, and refuse areas that:

- 13.1.2.a. Involve the same or substantially similar types of operations;
- 13.1.2.b. Discharge the same types of wastes;
- 13.1.2.c. Require the same effluent limitations or operation conditions;
- 13.1.2.d. Require the same or similar monitoring; and
- 13.1.2.e. In the opinion of the director, are more appropriately controlled under a general permit than under individuals permits.

13.1.3. If the director tentatively decides to issue a general permit, he or she shall prepare a draft general permit under Section 10.1.1 of ~~these regulations~~ this rule.

13.2. Administration.

13.2.1. General. -- General permits may be modified, reissued, suspended, or revoked in accordance with the applicable requirements of Section 8 of these regulations for either individual dischargers or for a category of point sources.

13.2.2. Requiring an individual permit. -- The director may require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person adversely affected or aggrieved may petition the director to take action under Section 13.2 of ~~these regulations~~ this rule. Cases where an individual permit may be required

include the following:

13.2.2.a. The discharger is not in compliance with the conditions of the general permit;

13.2.2.b. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

13.2.2.c. Effluent limitation guidelines are promulgated for point sources covered by the general permit;

13.2.2.d. A water quality management plan containing requirements applicable to such point sources is approved;

13.2.2.e. The requirements of Section 13.1 of ~~these regulations~~ this rule are not met.

§47-30-14. Decision On Variance.

14.1. Actions by director.

14.1.1. The director may grant or deny requests for the following variances:

14.1.1.a. After consultation with the Regional Administrator, extensions under CWA Section 301(k) based on the use of innovative technology; or

14.1.1.b. Variances under CWA Section 316(a) for thermal pollution.

14.1.2. The director may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

14.1.2.a. A variance based on the economic capability of the applicant under CWA Section 301(c); or

14.1.2.b. A variance based on water quality related effluent limitations under CWA Section 302(b)(2).

14.1.3. The director may deny or forward to the Administrator (or his delegate) with a written concurrence, or submit to the Administrator (or his delegate) without recommendation, a completed request for:

14.1.3.a. A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based; or

14.1.3.b. A variance based upon certain water quality factors under CWA Section 301(g).

14.2. Actions by EPA.

14.2.1. The Regional Administrator may deny, forward, or submit to the EPA Deputy Assistant Administrator for Water Enforcement with a recommendation for approval, a request for a variance listed in Section 14.2.2 of ~~these regulations~~ this rule that is forwarded by the director.

14.2.2. The EPA deputy assistant administrator for water enforcement may approve or deny any variance request submitted under Section 14.2.1 of ~~these regulations~~ this rule. If the Deputy Assistant Administrator approves the variance, the director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under 40 C.F.R. §124.64.

14.2.3. The Administrator (or his delegate) may grant or deny a request for a variance listed in Section 14.1.3 of ~~these regulations~~ this rule that is forwarded by the director. If the Administrator (or his delegate) approves the variance, the director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under 40 C.F.R. §124.64.

§47-30-15. Enforcement.

15.1. General. -- The provisions of this ~~chapter~~ rule may be enforced by all of the applicable provisions in ~~Article 5A and Article 6 of the West Virginia Code~~ WV Code §§22-11 and 22-3, including:

15.1.1. Orders or notices issued by the director in accordance with ~~Sections 7, 8, 10, and 12A of Article 5A~~ WV Code §22-11, Sections 11, 12, 15, and 19;

15.1.2. Civil penalties appropriate to the violation and injunctive relief in accordance with ~~Section 17 of Article 5A~~ WV Code §22-11-22; and

15.1.3. Criminal penalties in accordance with ~~Section 19 of Article 5A~~ WV Code §22-11-24.

15.2. Citizen participation. -- The director shall provide for public participation in enforcement by the following:

15.2.1. Investigating and providing a written response to all signed, written

complaints from citizens;

15.2.2. Not opposing intervention by any citizen in an ~~Article 5A~~ WV Code §22-11 proceeding when permissive intervention is authorized by statute or rule; and

15.2.3. Publishing notice in a newspaper of general circulation in the county in which the discharge is located at least thirty (30) days prior to the final settlement of any civil action under ~~Article 5A~~ WV Code §22-11 or consent order issued by the ~~State Water Resources Board~~ West Virginia Environmental Quality Board. This notice will identify the person discharging, the specific enforcement action to be taken, and the name and address where information on the proposed settlement can be obtained. The director shall consider all comments received during the thirty-day period.

FORMS MAY BE OBTAINED FROM SECRETARY OF STATE'S OFFICE

rerouted line would not discharge to a different receiving stream and would not require new or different permit conditions.

8.2.3.a.9. Allow relocation of elements of treatment facilities or disposal systems, due to topography or equipment failures.

8.2.3.a.10. When the WV/NPDES or NPDES permit becomes final and effective after March 9, 1982, conform to Sections 5.5, 5.13.1, 5.13.4.b, 5.13.4.d, 5.14, and 5.15.3.a of ~~these regulations~~ this rule.

8.2.3.b. Major modifications. -- The following are causes for major modification, but not reissuance of a permit unless the permittee requests or agrees, and require the preparation of a draft permit under Section 10.1 of ~~these regulations~~ this rule and the public notice procedures of Section 10.2 of ~~these regulations~~ this rule. If the permittee requests or agrees, then the following causes can be reason for a permit reissuance which will open the entire permit for comment and change:

8.2.3.b.1. Alterations. -- There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

Note: Certain reconstruction activities may cause the new source provisions of 40 C.F.R. §122.29 and Part 434 to be applicable. See also Sections 2.30 and 12 of ~~these regulations~~ this rule.

8.2.3.b.2. Information. -- The director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. This cause shall include any information indicating that cumulative effects on the environment are unacceptable.

8.2.3.b.3. New regulations or judicial decision. -- The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

8.2.3.b.3.A. For promulgation of amended standards or regulations, when:

8.2.3.b.3.A.i. The permit condition to be modified was based on a promulgated effluent limitation guideline or water quality standards; and

8.2.3.b.3.A.ii. The EPA or State has revised, withdrawn, or modified that portion of the effluent limitation guideline or water quality standard on which the permit condition was based; and

8.2.3.b.3.A.iii. If a modification request is made by the permittee, such request is within ninety (90) days of Federal Register or State Register notice of the action on which the request is based, unless the effluent limitations guidelines allow for a different time period.

8.2.3.b.3.B. For judicial decisions, when a court of competent jurisdiction has remanded and stayed State or federal promulgated regulations, if the remand and stay concern that portion of the regulations on which the permit condition was based and if the permittee is requesting the change, the request is filed by the permittee within ninety (90) days of judicial remand.

8.2.3.b.4. Compliance schedules. -- The director determines good cause exists for modification of a compliance schedule such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case shall a compliance schedule be modified to extend beyond an applicable CWA statutory deadline: July 1, 1984 for technology-based effluent limits under CWA Section 301(b)(1)(B) or July 1, 1977 for water quality based effluent limits under CWA Section 301(b)(1)(C).

8.2.3.b.5. Variances. -- When the permittee has filed a timely request for a variance under CWA Sections 301(c), 301(g), 301(h), 301(i), 301(k), 302(b)(2), or 316(a), or for "fundamentally different factors" under Section 4.5.6.a of ~~these regulations~~ this rule.

8.2.3.b.6. Toxics. -- When required to incorporate an applicable CWA Section 307(a) toxic effluent standard or prohibition.

8.2.3.b.7. Reopener. -- When required by the "reopener" conditions in a permit, which are established in the permit under ~~Section 6.2.4~~ Section 6.2.5 of ~~these regulations~~ this rule.

8.2.3.b.8. Net limitations. -- Upon request of a permittee who qualifies for effluent limitations on a net basis, or when a discharger is no longer eligible for net limitations, as provided in Section 7.7 of ~~these regulations~~ this rule.

8.2.3.b.9. Nonlimited pollutants. -- When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

8.2.3.b.10. Use or manufacture of toxics. -- When the permittee

begins or expects to begin to use or manufacture as an intermediate, final product, or by-product any toxic pollutant which was not reported in the permit application.

8.2.3.b.11. Notification levels. -- To establish a "notification level" as provided in Section 5.13.4.d of ~~these regulations~~ this rule.

8.2.3.b.12. Failure to notify affected state. -- Upon failure of the director to notify another state as required by Section 10.2.4 of ~~these regulations~~ this rule whose waters may be affected by a discharge from this state and different permit conditions are required to comply with the other states water quality standards.

8.2.3.b.13. Correction of mistakes. -- To correct technical mistakes, such as errors in calculation or mistaken interpretations of law made in determining permit conditions.

8.2.3.b.14. Unable to meet BPJ limits. -- When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under CWA Section 402(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved but shall not be less stringent than required by a subsequently promulgated effluent guideline.

8.2.3.b.15. BPJ limits too costly. -- When the permittee's effluent limitations were imposed under CWA Section 402(a)(1) and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline, but in no case may the limitation be less stringent than the subsequent guideline.

8.3. Reissuance.

8.3.1. General.

8.3.1.a. The director may reissue WV/NPDES permits prior to their expiration date for any cause specified in Section 8.3 of ~~these regulations~~ this rule. When a permit is to be reissued the entire permit is reopened and the director shall require submission of a new permit application.

8.3.1.b. During any reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is issued. Reissuance requires a draft permit under Section 10.1 of ~~these regulations~~ this rule and the public notice procedures of Section 10.2 of ~~these regulations~~ this rule. Processing of a reissuance application does not exempt the permittee from compliance with any permit term or condition.

8.3.2. Reissuance based on permittee request or agreement. -- The following are causes for reissuance of a permit when the permittee requests or agrees:

8.3.2.a. All causes for modification listed under Section 8.2.3.b of ~~these regulations~~ this rule.

8.3.2.b. The WV/NPDES permit will expire within eighteen (18) months and the permittee has submitted an application for reissuance which is approvable.

8.3.3. Reissuance Without Permittee Request or Agreement. -- The following are causes for reissuance of a permit:

8.3.3.a. Cause exists for suspension or revocation of the WV/NPDES permit under Section 8.4 of ~~these regulations~~ this rule and the director determines reissuance is appropriate.

8.3.3.b. The facility has ~~an Article 5A~~ a WV Code §22-11 permit which was issued prior to July 1, 1974 which does not have an expiration date.

8.3.3.c. The director has received notification of a proposed transfer of the permit and has determined to reissue both the WV/NPDES permit and surface mining permit.

8.3.3.d. Conditions exist which allow reopening and reissuance of the permit under Section 5.16 of ~~these regulations~~ this rule.

8.4. Suspension and revocation of permits. -- Permits may be suspended or revoked in whole or in part. When suspending or revoking a permit the director shall follow the procedures of Sections 10 and 11 of ~~these regulations~~ this rule. A notice of intent to revoke a permit is a type of draft permit which follows the same procedures as any draft permit under Section 10.1 of ~~these regulations~~ this rule. The following may be causes for revocation or suspension of a permit during its term, or for denying a permit reissuance application:

8.4.1. Noncompliance by the permittee with any condition of the WV/NPDES permit or ~~Article 5A~~ WV Code §22-11; or

8.4.2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

8.4.3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or revocation; or

8.4.4. A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

8.4.5. Revocation of a permit issued under WVSMRCA.

§47-30-9. Permits For Major Facilities.

9.1. Designation of major facilities.

9.1.1. Because of their size of discharge, location in an environmentally sensitive area, or for other reasons, certain facilities have been classified as major facilities by the Regional Administrator. All such major facilities are facilities for which EPA has not waived the right to review, object to, or comment upon pursuant to the Memorandum of Agreement. In addition, the director may make additional designations of major facility status of facilities not already classified as such.

9.1.2. Facilities designated as major will be informed at the time of permit issuance.

9.1.3. Such facilities will be subject to special requirements as set forth in Section 9.2 of ~~these regulations~~ this rule.

9.2. Special requirements for major facilities.

9.2.1. All facilities designated as major facilities by the Regional Administrator in conjunction with the director:

9.2.1.a. Will have a fact sheet prepared on them pursuant to Section 11 of ~~these regulations~~ this rule whenever a draft permit is issued for them;

9.2.1.b. Must submit all discharge monitoring reports and reports of noncompliance required by their WV/NPDES or NPDES permit or under Section 5.11 of ~~these regulations~~ this rule to both the director and the Regional Administrator;

9.2.1.c. Will be annually subject to either a Compliance Sampling Inspection (CSI), Compliance Evaluation Inspection (CEI) or Performance Audit Inspection (PAI);

9.2.1.d. Will have copies of compliance inspection reports and correspondence regarding noncompliance forwarded to EPA.

9.2.2. All facilities classified as major solely by the director will be subject to

an annual inspection under Section 9.2.1.c of ~~these regulations~~ this rule.

§47-30-10. Procedure For Permit Issuance.

10.1. General.

10.1.1. Once an application is complete, the director shall tentatively decide whether to prepare a draft permit or to deny the application.

10.1.2. If the director decides to prepare a draft permit, it shall contain the following information:

10.1.2.a. All applicable conditions under Sections 5 and 6 of ~~these regulations~~ this rule;

10.1.2.b. All monitoring requirements; and

10.1.2.c. Effluent limitations, standards, prohibitions and conditions and all variances under Section 14 of ~~these regulations~~ this rule that are to be included.

10.1.3. All draft permits shall be accompanied by a fact sheet if required under Section 11 of ~~these regulations~~ this rule and shall be publicly noticed and available for public comment in accordance with Section 10.2 of ~~these regulations~~ this rule.

10.2. Public notice, comment, and hearings.

10.2.1. Public notice.

10.2.1.a. Scope.

10.2.1.a.1. Public notice shall be given that a draft permit has been prepared.

10.2.1.a.2. Public notices may describe more than one permit or permit action.

10.2.1.a.3. Public notice shall be given of any hearing granted under Section 10.3 of ~~these regulations~~ this rule.

10.2.1.b. Timing.

10.2.1.b.1. Public notice of the preparation of a draft permit shall allow at least thirty (30) days for public comment. Extra time may be allowed if requested.

10.2.1.b.2. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.

10.2.2. Reopening of the public comment period. -- If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the director may reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted. The director may also extend the comment period for good cause.

10.2.3. Proof of publication. -- The applicant shall be responsible for publication of a legal advertisement in a qualified newspaper of general circulation in the location of the proposed permit area. Before the expiration of the WV/NPDES notice period in Section 10.2.1.b.1 of these regulations this rule, the applicant shall send the director a copy of the advertisement and proof of publishing along with an affidavit certifying that the notice, and a fact sheet, if required, was sent to all persons listed in Sections 10.2.4.a.1 and 10.2.4.a.2 of ~~these regulations this rule~~. A WV/NPDES permit may not be issued until such affidavit is received.

10.2.4. Methods. In addition to the requirements of Section 10.2.3 of ~~these regulations this rule~~, public notice of the draft permit shall be given by the following methods:

10.2.4.a. By the applicant mailing a copy of a notice to the following persons:

10.2.4.a.1. Federal, State, and interstate agencies with jurisdiction over fish and wildlife resources including the United States Fish and Wildlife Service and the ~~Division of Wildlife Resources~~ Section of the West Virginia Department Division of Natural Resources; United States Army Corps of Engineers; the Historic Preservation Unit of the West Virginia Department of Culture and History; the Advisory Council on Historic Preservation; and other appropriate government authorities, including any affected states.

10.2.4.a.2. Any other State or federal agency which the director knows has issued or is required to issue a permit for the same facility or activity under any of the following federal programs:

10.2.4.a.2.A. For RCRA: ~~The Division of Waste Management of the West Virginia Department of Natural Resources and the West Virginia Air Pollution Control Commission;~~ The West Virginia Division of Environmental Protection's, Office of Waste Management and Office of Air Quality;

10.2.4.a.2.B. For UIC: ~~The Division of Water Resources and the West Virginia Department of Energy;~~ The West Virginia Division of

Environmental Protection's Office of Water Resources;

10.2.4.a.2.C. For 404: The United States Army Corps of Engineers, Pittsburgh District or Huntington District;

10.2.4.a.2.D. For PSD: ~~The West Virginia Air Pollution Control Commission.~~ The West Virginia Division of Environmental Protection's Office of Air Quality.

10.2.4.a.3. To any unit of local government having jurisdiction over the area where the facility is proposed to be located;

10.2.4.a.4. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

10.2.4.a.5. Any person otherwise entitled to receive notice under Section 10.2.4.a of ~~these regulations~~ this rule may waive his rights to receive notice for any classes and categories of permits.

10.2.4.b. The director shall send the public notice to persons on a mailing list which is developed by:

10.2.4.b.1. Including those who request in writing to be on the list;

10.2.4.b.2. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

10.2.4.b.3. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and State funded newsletters or environmental bulletins. The list may be updated from time to time by requesting written indication of continued interest from those listed. Persons may be deleted from the list if they fail to respond to such a request.

10.2.4.c. In addition to the general public notice described in Section 10.2.5 of ~~these regulations~~ this rule, all persons identified in Sections 10.2.4.a.1 and 10.2.4.a.2 of ~~these regulations~~ this rule shall be mailed a copy of the fact sheet, if any, and the draft permit and application unless such person requests, in writing, that these documents not be sent.

10.2.5. Contents.

10.2.5.a. All public notices. -- All public notices issued under Section 10.2 of ~~these regulations~~ this rule shall contain the following minimum information:

10.2.5.a.1. Name and address of the office processing the permit action for which notice is being given;

10.2.5.a.2. Name and address of the permittee or permit applicant and a location map of the proposed area, except in the case of general permits;

10.2.5.a.3. A brief description of the business conducted at the facility or activity described in the permit application or in the draft permit, except in the case of general permits;

10.2.5.a.4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application;

10.2.5.a.5. A brief description of the comment procedures required and the time and place of any hearing that will be held, including a statement of procedures to request a hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

10.2.5.a.6. A general description and map of the location of the facility and the name of the receiving water(s). For draft general permits, this requirement will be satisfied by a map or description of the permit area.

10.2.5.a.7. Any other information considered necessary or proper.

10.2.5.b. Public notices for hearings. -- In addition to the general public notice requirements of Section 10.2.5.a of ~~these regulations~~ this rule, a public notice of a public hearing shall contain the following information:

10.2.5.b.1. Reference to the date of previous public notices relating to the permit;

10.2.5.b.2. Date, time, and place of the hearing; and

10.2.5.b.3. A brief description of the nature and purpose of the hearing, including applicable rules and procedures.

10.2.6. Public comments and requests for public hearings. -- During the public comment period provided under Section 10.2.1 of ~~these regulations~~ this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if a public hearing has not been already scheduled. A request for a public hearing shall

be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 10.4 of ~~these regulations~~ this rule.

10.3. Public hearings.

10.3.1. The director shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest on issues relevant to the draft permit(s). The director also may hold a public hearing at his discretion whenever such a hearing might clarify one or more issues involved in the permit decision.

10.3.2. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 10.2.1.b.1 of ~~these regulations~~ this rule shall automatically be extended to the close of any public hearing held under the provisions of Section 10.3 of ~~these regulations~~ this rule.

10.3.3. A tape recording or written transcript of the hearing shall be made available to the public, upon request.

10.4. Response to comments.

10.4.1. At the time that any final permit is issued, the director shall issue a response to comments. This response shall:

10.4.1.a. Specify which provisions of the draft permit have been changed in the final permit decision and the reasons for the change; and

10.4.1.b. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing.

10.4.2. The response to comments shall be available to the public.

10.5. Public comment by government agencies.

10.5.1. If during the comment period for a draft permit, the District Engineer of the U.S. Army Corps of Engineers advises the director in writing that anchorage and navigation of any of the waters of the State would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the director shall include the specified conditions in the permit. Review or appeal of denial of a permit under Section 10 of ~~these regulations~~ this rule or of conditions specified by the District Engineer shall be made through

the applicable procedures of the Corps of Engineers and may not be made under the provisions of this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be stayed in the WV/NPDES permit for the duration of that stay.

10.5.2. If during the comment period, any other State or federal agency with jurisdiction over fish, wildlife, or public health advises the director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial risk to public health or impairment of fish, shellfish, or wildlife resources, the director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of CWA and ~~Article 5A~~ WV Code §22-11.

10.5.3. In appropriate cases the director may consult with one or more of the agencies referred to in Section 10 of ~~these regulations~~ this rule before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.

10.6. Public access to information. -- Public access to information shall be governed by the Freedom of Information Act, Chapter 29B of the West Virginia Code.

§47-30-11. Fact Sheet.

11.1. Fact sheet preparation. -- A fact sheet shall be prepared for every draft permit for:

11.1.1. A major facility or activity;

11.1.2. Every general permit;

11.1.3. Every draft permit that incorporates a variance; and

11.1.4. Every draft permit which the director finds is the subject to widespread public interest or raises major issues.

11.1.5. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The director shall send this fact sheet to the applicant, to the ~~Division~~ Office of Water Resources and, on request, to any other person.

11.2. Fact sheet contents. -- The fact sheet shall include, when applicable:

11.2.1. A brief description of the type of facility or activity which is the subject of the draft permit.

11.2.2. The type and quantity of wastes, fluids, or pollutants which are

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APPENDIX A

Toxic Pollutants under CWA Section 307(a)

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Aldrin and Dieldrin
5. Antimony and compounds
6. Arsenic and compounds
7. Asbestos
8. Benzene
9. Benzidine
10. Beryllium and compounds
11. Cadmium and compounds
12. Carbon tetrachloride
13. Chlorodane (technical mixture and metabolites)
14. Chlorinated benzenes except dichlorobenzenes
15. Chlorinated ethanes:
 - 1,2-Dichloroethane
 - 1,1,1-Trichloroethane
 - Hexachloroethane
16. Chloroalkyl ethers:
 - Chloromethyl ether
 - Chloroethyl ether
 - Mixed ethers
17. Chlorinated naphthalene
18. Chlorinated phenols:
 - Trichlorophenols
 - Chlorinated cresols
19. Chloroform
20. 2-Chlorophenol
21. Chromium and compounds
22. Copper and compounds
23. Cyanides
24. DDT and metabolites
25. Dichlorobenzenes:
 - 1,2-Dichlorobenzene
 - 1,3-Dichlorobenzene
 - 1,4-Dichlorobenzene
26. Dichlorobenzidine
27. Dichloroethylenes:
 - 1,1-Dichloroethylene
 - 1,2-Dichloroethylene
28. 2,4-Dichlorophenol

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APPENDIX A continued

Toxic Pollutants under CWA Section 307(a)

29. Dichloropropane and Dichloropropene
30. 2,4-Dimethylphenol
31. Dinitrotoluene
32. Diphenylhydrazine
33. Endosulfan and metabolites
34. Endrin and metabolites
35. Ethylbenzene
36. Fluoranthene
37. Haloethers:
 - Chlorophenylphenyl ethers
 - Bromophenylphenyl ether
 - Bis (chloroethoxy) methane
 - Polychlorinated diphenyl ethers
38. Halomethanes:
 - Methylene chloride
 - Methylchloride
 - Methylbromide
 - Bromoform
 - Dichlorobromomethane
 - Trichlorofluoromethane
 - Dichlorodifluoromethane
39. Heptachlor and metabolites
40. Hexachlorobutadiene
41. Hexachlorocyclohexane
42. Hexachlorocyclopentadiene
43. Isophorone
44. Lead and compounds
45. Mercury and compounds
46. Naphthalene
47. Nickel and compounds
48. Nitrobenzene
49. Nitrophenols:
 - 2,4-Dinitrophenol
 - Dinitrocresol
50. Nitrosamines
51. Pentachlorophenol
52. Phenol
53. Phthalate ester
54. Polychlorinated biphenyls (PCBs)

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APPENDIX A continued

Toxic Pollutants under CWA Section 307(a)

55. Polynuclear aromatic hydrocarbons:
 - Benanthracenes
 - Benzopyrenes
 - Benzofluoranthene
 - Chrysenes
 - Dibenzathracenes
 - Indenopyrenes
56. Selenium and compounds
57. Silver and compounds
58. 2,3,7,8-Tetrachloro-dibenzo-p-dioxin (TCDD)
59. Tetrachloroethylene
60. Thallium and compounds
61. Toluene
62. Toxaphene
63. Trichloroethylene
64. Vinyl chloride
65. Zinc and compounds

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APPENDIX B

**Other Toxic Pollutants
(Metals, Cyanide, and Total Phenols)**

1. Total Antimony
2. Total Arsenic
3. Total Beryllium
4. Total Cadmium
5. Total Chromium
6. Total Copper
7. Total Lead
8. Total Mercury
9. Total Nickel
10. Total Selenium
11. Total Silver
12. Total Thallium
13. Total Zinc
14. Total Cyanide
15. Total Phenols

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APPENDIX C

Organiz Toxic Pollutants

- Volatiles -

- 1V. Acrolein
- 2V. Acrylonitrile
- 3V. Benzene
- 5V. Bromoform
- 6V. Carbon tetrachloride
- 7V. Chlorobenzene
- 8V. Chlorodibromomethane
- 9V. Chloroethane
- 10V. 2-Chloroethylvinyl ether
- 11V. Chloroform
- 12V. Dichlorobromomethane
- 14V. 1,1-Dichloroethane
- 15V. 1,2-Dichloroethane
- 16V. 1,1-Dichloroethylene
- 17V. 1,2-Dichloropropane
- 18V. 1,3-Dichloropropylene
- 19V. Ethylbenzene
- 20V. Methyl bromide
- 21V. Methyl chloride
- 22V. Methylene chloride
- 23V. 1,1,2-Tetrachloroethane
- 24V. Tetrachloroethylene
- 25V. Toluene
- 26V. 1,2-Trans-dichloroethylene
- 27V. 1,1,1-Trichloroethane
- 28V. 1,1,2-Trichloroethane
- 29V. Trichloroethylene
- 31V. Vinyl chloride

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APPENDIX C continued

Organic Toxic Pollutants

- Acids -

- 1A. 2-Chlorophenol
- 2A. 2,4-Dichlorophenol
- 3A. 2,4-Dimethylphenol
- 4A. 4,6-Dinitro-o-cresol
- 5A. 2,4-Dinitrophenol
- 6A. 2-Nitrophenol
- 7A. 4-Nitrophenol
- 8A. p-Chloro-m-cresol
- 9A. Pentachlorophenol
- 10A. Phenol
- 11A. 2,4,6-Trichlorophenol

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APPENDIX C continued

Organic Toxic Pollutants

- Pesticides -

- 1P. Aldrin
- 2P. alpha-BHC
- 3P. beta-BHC
- 4P. gamma-BHC
- 5P. delta-BHC
- 6P. Chlordane
- 7P. 4,4'-DDT
- 8P. 4,4'-DDE
- 9P. 4,4'-DDD
- 10P. Dieldrin
- 11P. alpha-Endosulfan
- 12P. beta-Endosulfan
- 13P. Endosulfan sulfate
- 14P. Endrin
- 15P. Endrin aldehyde
- 16P. Heptachlor
- 17P. Heptachlor epoxide
- 18P. PCB-1242
- 19P. PCB-1254
- 20P. PCB-1221
- 21P. PCB-1232
- 22P. PCB-1248
- 23P. PCB-1260
- 24P. PCB-1016
- 25P. Toxaphene

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APPENDIX C continued

Organic Toxic Pollutants

- Bases/Neutral -

- 1B. Acenaphthene
- 2B. Acenaphthylene
- 3B. Anthracene
- 4B. Benzidine
- 5B. Benzo(a)anthracene
- 6B. Benzo(a)pyrene
- 7B. 3,4-Benzofluoranthene
- 8B. Benzo(ghi)perylene
- 9B. Benzo(k)fluoranthene
- 10B. Bis(2-chloroethoxy)methane
- 11B. Bis(2-chloroethyl)ether
- 12B. Bis(2-chloroisopropyl)ether
- 13B. Bis(2-ethylhexyl)phthalate
- 14B. 4-Bromophenyl phenyl ether
- 15B. Butylbenzyl phthalate
- 16B. 2-Chlorophthalene
- 17B. 4-Chlorophenyl phenyl ether
- 18B. Chrysene
- 19B. Dibenzo(a,h)anthracene
- 20B. 1,2-Dichlorobenzene
- 21B. 1,3-Dichlorobenzene
- 22B. 1,4-Dichlorobenzene
- 23B. 3,3'-Dichlorobenzidine
- 24B. Diethyl phthalate
- 25B. Dimethyl phthalate
- 26B. Di-n-butyl phthalate
- 27B. 2,4-Dinitrotoluene
- 28B. 2,6-Dinitrotoluene
- 29B. Di-n-octyl phthalate
- 30B. 1,2-Diphenylhydrazine (as azobenzene)
- 31B. Fluoranthene
- 32B. Fluorene
- 33B. Hexachlorobenzene
- 34B. Hexachlorobutadiene
- 35B. Hexachlorocyclopentadiene
- 36B. Hexachloroethane
- 37B. Indeno(1,2,3-cd)pyrene
- 38B. Isophorone

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APPENDIX C continued

Organic Toxic Pollutants

- Bases/Neutral -

- 39B. Naphthalene
- 40B. Nitrobenzene
- 41B. N-nitrosodimethylamine
- 42B. N-nitrosid-n-propylamine
- 43B. N-nitrosodiphenylamine
- 44B. Phenanthrene
- 45B. Pyrene
- 46B. 1,2,4-Trichlorobenzene

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APPENDIX D

**Conventional and Nonconventional Pollutants Required
to be Tested by Existing Dischargers
if Expected to be Present**

Bromide
Total Residual Chlorine
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Total Organic Nitrogen
Oil and Grease
Total Phosphorus
Radioactivity
Sulfate
Sulfide
Sulfite
Surfactants

Total Aluminum
Total Barium
Total Boron
Total Cobalt
Total Iron
Total magnesium
Total Molydenum
Total Manganese
Total Tin
Total Titanium

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APPENDIX E

**Toxic Pollutants and Hazardous Substances Required
to be Identified by Existing Dischargers
if Expected to be Present**

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Asbestos
Benzonitrile
Benzl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cyclohexane
2,3-Dichlorophenoxyacetic acid (2,4-D)
Diazinon
Dicamba
Dichlobenil
Diclone
2,2-Dichloropropionic acid
Dichlorvos
Diethyl amine
Dimethyl amine
Dinitrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethion
Ethylene Diamine
Ethylene dibromide
Formaldehyde
Furfural

Title 47, Series 30
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APPENDIX E continued

**Toxic Pollutants and Hazardous Substances Required
to be Identified by Existing Dischargers
if Expected to be Present**

Guthion
Isoprene
Isopropanolamine dodecylbenzenesulfonate
Kelthane
Kepone
Malthion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine
Naled
Naththenic acid
Nitrotoluene
Parathion
Phenolsulfanate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5-Trichlorophenoxyacetic acid (2,4,5-T)
Tetrachlorodiphenylethane
2,4,5-Trichlorophenoxy propanoic acid (2,4,5-TP)
Trichlorogon
Triethanolamine dodecylbenzenesulfonate
Triethylamine
Trimethylamine
Uranium
Vanadium

Title 47, Series 30
WV/NPDES REGULATIONS FOR COAL MINING FACILITIES

APPENDIX E continued

**Toxic Pollutants and Hazardous Substances Required
to be Identified by Existing Dischargers
if Expected to be Present**

Vinyl acetate
Xylene
Xylenol
Zirconium

RESPONSIVE SUMMARY

A public hearing was held on August 21, 1996 at 6:00 p.m. at the Division of Environmental Protection's Training Room in Nitro. No one attended the public hearing, therefore, there is no transcript of the proceedings. There were three written comments received and the following is in response to those comments.

One comment received suggested a change to the definition of "Coal Remining Operation" concerning the date that affects eligibility. The comment received suggested that instead of the 1977 date being used, that the enactment date of the amendment to the Clean Water Act be used, which is February 4, 1987. In support of the requested change, the comment received provided an Office of Surface Mining (OSM) document entitled "Water Quality Incentives" (attachment c) that list as one of the incentives, "Provide operations that remine sites mined prior to February 4, 1987, exemptions from water quality requirements".

In response to the requested change; currently, the federal counterpart Section 301(p) of the Clean Water Act states, that only sites where mining was conducted before the effective date of the federal Surface Mining Control and Reclamation Act of 1977 are eligible for the Best Professional Judgment (BPJ) effluent limits. To make the requested change would make the State rule less stringent than the federal counterpart causing the Environmental Protection Agency to object to such change and making the State National Pollutant Discharge Elimination System (NPDES) Program less effective than the federal counterpart program. Furthermore, attachment c is labeled "draft" and the agency is unclear whether or not this is a final Office of Surface Mining initiative. The agency believes attachment c is more of a wish list to promote remining. In order for the date to be changed and the other initiatives in attachment c to take place changes need to occur to the counterpart federal requirements.

Two comments were received on the definition of "Pre-existing Discharge". Both comments concerned the second and third sentences in the definition and suggested or implied the definition could be better written. One of the comments went further and questioned the meaning of "subsection" in the definition, since subsection was not defined. Both comments offered suggested language to read more clearer.

In response to the requested changes both the agency and the persons who commented recognize that these pre-existing discharges can occur both on the proposed remining site, and will be encountered during the remining operation; and a distance away from the proposed remining site, and will not be encountered during the remining operation. And both the agency and the persons who commented recognize that only the pre-existing discharges that are hydrological connected to the proposed remining site will

be subject to the Best Professional Judgment effluent limits. Therefore, the agency acknowledges there are many ways of stating or writing this definition of pre-existing discharge. The agency's intent was to use the actual phrases that appear in the federal Clean Water Act amendment, which are "from the remined area" and "affected by the remining operation". When writing legislative rules to implement a statutory requirement, it is better to use the words listed in the statute to provide further meaning or intent. The reference to "subsection" in the definition is Subsection 301 (p) of the federal Clean Water Act, which is the remining amendment. The agency agrees that the subsection needs to be defined. The agency believes both requested changes read better, and both do not render the definition less stringent or more stringent than what the agency proposed. Therefore, the agency will adopt a combination of both suggested languages to read as follows:

"Pre-Existing Discharge" means any discharge at the time of permit application under subsection 301(p) of the federal Clean Water Act. A pre-existing discharge may originate from within the coal remining operation or from outside the coal remining operation provided there is a demonstrated hydrological connection between the coal remining operation and the pre-existing discharge.

Two comments were received on the proposed subsection "6.2.4 Modified Effluent Limitations for Coal Remining Operations" concerning the first sentence and the last two sentences. The concerns were reference to an agency's policy in a legislative rule, the phrase "as amended", and a suggestion to add a phrase to reference the pre-existing discharges affected by remining operations. In support of the suggested changes one comment was "it is inappropriate for a rule or regulation to reference such non-legislative document", furthermore, "policies should not be referenced as if they generate or drive regulations or statutes". However, the comment does acknowledge that the agency can issue such policy describing how remining effluent standards will be measured and set. In support of the suggested change to delete the phrase "as amended", the concern was the policy could change without any public participation and thus the procedures and methodology to set the effluent limits would be automatically adopted by the rule. In support of the suggested change to include the phrase "or of any pre-existing discharge affected by the remining operation" the comment was this would then be consistent with the counterpart federal Clean Water Act amendment.

In response to the comment addressing "reference to a policy in a rule" and the phrase "as amended" the agency offers the following. Both comments submitted referred to the Environmental Quality Board variance rule. One comment more specifically Senate Bill (SB) 287, which authorized the Environmental Quality Board to promulgate rules on granting site specific coal remining variances. And the second comment more specifically the rule that was passed by the legislature. In the rule that the Environmental Quality board promulgated, Title 46, Series 6, Subsection 6.2 reference is made to the agency's Coal Remining Policy dated September 30, 1993. Furthermore, the phrase "as amended" does not appear. This is an example of a rule passed by our legislature with a reference to a policy. And to be consistent with that rule the agency will delete the phrase "as amended" from its proposed rule. This will establish the methodology for the setting the effluent limits for the coal remining operations. In the event the policy changes then the

agency will have to go through rulemaking to adopt the revised policy changes. In response to the phrase "or of any pre-existing discharge affected by the remining operation" that was the agency's intent and was an oversight that reference was not made. The agency will include the phrase and the rule will be consistent with the counterpart federal Clean Water Act amendment. The revised rule will read as follows:

6.2.4 Modified Effluent Limitation for Coal Remining Operations. The Director may issue an NPDES Permit which modifies the effluent limitations for iron, manganese, or pH of any pre-existing discharge from the remined area of any coal remining operation or of any pre-existing discharge affected by the coal remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment. The specific numerical effluent limitation in each permit shall be in accordance with the West Virginia Division of Environmental Protection's Coal Remining Policy issued on September 30, 1993. Total Hot Acidity will be used in lieu of pH in the establishment of the effluent limitation (loading).

A comment was received that suggested a phrase be added to proposed rule Title 47, Series 30, Section 6.2.4 instructing the applicant to submit an application to the Environmental Quality Board for a variance from numeric water quality standards for remining activities. In support of the suggested change the comment provided the counterpart federal Clean Water Act amendment states that the remining operation shall not exceed state water quality standards as does the Coal Remining Policy issued on September 30, 1993.

In response to the requested change the agency feels there are already enough checks and balances in the proposed rule and the existing Coal Remining Policy for an applicant to seek a variance to water quality standards. Both the proposed rule and the Coal Remining Policy reference the counterpart federal Clean Water Act that emphasizes no discharge from or affected by the remining operation shall exceed state water quality standards. Furthermore, there may be an instance where a variance to water quality standards is not needed. Currently, Title 47, Series 30, Section 3.2.1.f prohibit the agency from issuing a NPDES permit that would cause or contribute to violations of state water quality standards. In closing, the agency believes there are already enough requirements to ensure that the applicant seeks a variance to water quality standards, if required.

MINUTES

DEP ADVISORY COUNCIL

July 17, 1996

The special meeting of the DEP Advisory Council was held July 17, 1996, at DEP's headquarters in Nitro, West Virginia. The meeting was called to order at 1:00 p.m. by Chairman Eli McCoy.

ATTENDING - Advisory Council:

Eli McCoy (Chairman)
William Samples
Rick Roberts

William Raney
Larry Harris
Jacqueline Hallinan

DEP:

Mark Scott
Dick Cooke
Ken Ellison
Britt Ludwig
Ken Politan
Ken Ward

Jerry Ray
Mike Dorsey
Dale Farley
Wendy Radcliff
Charlie Sturey

Eli McCoy began the meeting by welcoming the Council members to the Nitro Office for a special meeting that was scheduled to discuss the proposed amendments to DEP's 1997 rules. Mark Scott said that in accordance with WV Code §22-1-3(c), which requires the Director of the Division of Environmental Protection to consult with the Advisory Council prior to proposing any new rule and that Council's recommendations will be recorded and made part of the rule package when it is filed with Legislative Rule-Making and the Secretary of State's Office the end of August.

Mark briefly reviewed the proposed rules provided to the Council. He noted that an amendment to an existing Environmental Quality Board rule was filed recently regarding water quality standards. Since this is a Board rule, and only requires the approval of the Director for filing, it is not part of the DEP rule package the Council has before them. He stated that a copy will be made available to them if they would like to review it.

47CSR35 - "Hazardous Waste Management Rule"

Mike Dorsey, Office of Waste Management, gave the Council a brief explanation of the Hazardous Waste Management Rule. He

explained that all the proposed amendments, excluding one sentence, were made to adopt the federal hazardous waste regulations by reference.

Bill Samples asked Mike whether someone complying with the federal rule would also be in compliance with the state requirements.

Mike replied that if you are complying with the federal rules, you are also considered in compliance with the state rule.

No specific comments on the rule were made by the Council.

46CSR32 - "Underground Storage Tank Insurance Trust Fund"

Ken Ellison, Office of Waste Management, gave a brief summary of the changes that are being proposed for the Underground Storage Tank Insurance Fund. General discussion was held concerning changes in the UST rule, but no specific comments were made by the Council.

Proposed Brownfields Legislation

Ken Ellison also explained the proposed Brownfields Legislation.

Bill Samples asked if remediation standards are being developed.

Ken answered yes, they are in the process, but they are very preliminary at this point.

Bill Raney asked if the Brownfields rule will supersede other existing federal or state requirements.

Ken said no - all other environmental rules have to be adhered to.

Bill Samples asked about the time frame on the proposed rule package.

Ken stated that the rule-drafting committee, which is totally voluntary, has set a date of September to try to get the first draft out. The law states that the agency only has to propose the rule within a year of the effective date of the law.

Bill Samples said he believes it is important to get this in place and implemented as soon as possible.

Larry Harris asked if the rule-drafting committee seems to be working toward a consensus.

Ken stated that the Governor had requested Dr. Mary Wimmer, Professor of Biochemistry at WVU, and Dr. Paul Hill, Chief Executive Officer of the National Institute for Chemical Studies, to co-chair the rule-making committee, and he feels they are the real strength to achieving a consensus. He believes that the participants are taking this task seriously and trying very hard to reach a consensus.

Jackie Hallinan asked Ken what appears to be the most contentious issue.

Ken replied that the most contentious issues are risk assessment and risk management. There still needs to be a consensus on a range of scientific and technical parameters to use in risk assessment, and there is a different degree of certainty as to what the results will be depending on which parameters are selected. Risk management decisions have to be made within a framework that recognizes that the risk assessor may not be able to quantify the risk for many constituents. At that point, the risk management decision becomes more of a combination of analysis and deliberation of all the interested and affected parties' issues.

Since these rules are still in draft form, no specific comments were made by the Council.

47CSR38 - "Solid Waste Management Rule"

Dick Cooke, Office of Waste Management, briefly described the changes proposed in the Solid Waste Management rule. To receive EPA approval, one sentence in the state code pertaining to the \$8,000 per acre cap on bonding needs to be removed.

Bill Samples asked if EPA has a limit set per acre. Dick said that EPA does not have a limit.

Bill Samples said that as far as the code change DEP is simply eliminating the \$8,000 cap without substituting and not imposing any restriction on bonding. Dick replied that is correct.

38CSR2 - "Surface Mining & Reclamation Rules"

Charlie Sturey, Office of Mining & Reclamation, explained the changes in the Surface Mining and Reclamation Rule. He also stated that all changes in the rule have a corresponding code change.

The main concerns in the surface mining rule were as follows:

11.6 - Site Specific Bonding - Removal of the \$5,000 cap: Bill Raney asked the basis for removing the cap. Director McCoy stated that removal of the \$5,000 cap was at the insistence of OSM. OSM believes that the cap when set at \$5,000 would be insufficient to reclaim some areas, i.e., coal preparation areas or sites we have bonded at higher costs.

14.11 - Procedures to Obtain Inactive Status - Bill Raney said he has concerns regarding the 10-year cap on inactive status for prep plants or load-out facilities; especially for the larger facilities that maintain good security.

Eli stated that prior to 1988 there was a problem with reclamation of inactive sites, and regulations were promulgated to take care of the problem. He said it doesn't seem to be a big problem now. He also stated that inactive status can be renewed and regardless of what the agency's action may be, the decision can be appealed before the Surface Mine Board, and they can overrule any agency decision if they believe otherwise.

Eli asked Bill Raney if, from industry's point of view, he would like to see those numbers removed and propose some idea to allow the inactive status to be extended longer.

Bill Raney stated that longer is not necessarily the concern; going into active and back into inactive is, but feels this is not the time to work out the details.

Larry Harris asked if we have a list of those inactive sites. Eli said DEP does have a database list of over 200 inactive sites.

After Section 14.15 "Contemporaneous Reclamation Standards" of the surface mining rule was explained, Bill Raney stated he would like to go on record stating that this requirement in the state rule is in excess of all federal requirements.

Larry Harris asked if there is a tax or fee charged on the basis of disturbed acres. Charlie Sturey replied that the bond is not released.

A discussion was then held on Section 28 of the Code as it relates to special authorization for reclamation of existing abandoned coal on 5 acres or less if they are doing a certain type of project.

The main concern with this proposed change was the removal is limited to 5 acres. Rick Roberts asked what happens if you

have a 40-acre development site and 20 acres of coal needs to be removed. Director McCoy stated he did not realize there is a 5-acre limit in the rule. He said DEP needs to look into that and weigh the pros and cons of limiting the removal to 5 acres.

47CSR30 - "WV/NPDES Regulations for Coal Mining Facilities"

Ken Politan, Office of Mining and Reclamation, explained the changes in the NPDES Regulation for Coal Mining Facilities. There was general discussion among the Council members but no specific comments concerning the changes.

47CSR11A - "Wasteloads"

Jerry Ray, Office of Water Resources, gave a brief review of the proposed new wasteload rule and explained the reason for the new rule. He said the Office of Water Resources had originally planned to file it as an Interpretative rule, but after review by the Secretary of State's Office, it will be filed as a Legislative rule.

Rick Roberts expressed his concern with limiting the wasteload allocation to 12 months. He believes that with limitations on funding to construct wastewater treatment facilities, or the time it takes to obtain other permits, the time frame should be extended and asked if there is a waiver to extend the permit in certain circumstances. Jerry Ray answered no, there is no waiver.

Director McCoy stated that the problem with wasteload allocations has only existed in the last 5 years. In the past, anyone could obtain a wasteload allocation and continue to get it renewed for an undetermined amount of time. There is a potential for someone to get a wasteload allocation, never use it, and then sell their property and believe they are selling a wasteload allocation with it to get greater value from the property.

38CSR10 - "Environmental Advocate"

Wendy Radcliff, DEP's Environmental Advocate, explained to the Council the circumstances behind refileing the Advocate rule. When the office was created in 1994, DEP was asked to promulgate rules setting forth the duties of the advocate office. DEP filed those rules as Interpretive rules with approval from the Secretary of State's office. A legislative performance audit of the Advocate office was conducted in April of this year. One of the recommendations was to refile the rules as legislative rules. These are identical to the interpretive rules filed in 1994.

There were no comments from the Council members.

45CSR1 - "Confidential Information"; 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"; "45CSR34 - Emission Standards for Hazardous Air Pollutants Pursuant to 40CFR Part 63"; and 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60"

Dale Farley, Chief of the Office of Air Quality said that three of these rules (45CSR25, 45CSR34, and 45CSR16) are incorporating by reference federal requirements that are necessary to keep the program up to date under Title 5. He then went on to explain the federal requirements to the Advisory Council.

There were no substantive comments from the Council members on these three DEP rules.

Dale briefed the Council members on the fourth DEP rule - "Confidential Information". Compared to the other sections in DEP, Air Quality seems to deal more with confidential information than any other. He said the most significant change in the rule would allow DEP to move away from the situation of inspecting the files, identifying all the documents, and then reviewing them again to determine if the files are confidential.

Jackie Hallinan said she had read the proposed rule and believes it is a step in the right direction to hopefully improve the FOIA process when information requested is contained in files that also house confidential information.

After the discussion of the Air Quality rules, Mark Scott reminded the Council members that they could also submit written comments on any of the proposed rules until the close of the public hearing for that particular rule. He told the Council that DEP will mail them a list of the public hearings that will include the date, time, and location.

Director McCoy then adjourned the meeting at approximately 4:00 p.m.



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COMMENTS RE: Proposed NPDES Regulations for Remining Operations
WV Division of Environmental Protection
Office of Water Resources
Legislative Rules Title 47, Series 30

DATE: August 21, 1996

SUBMITTED BY: Cindy Rank, WVHC Mining Committee Chair
HC 78, Box 227 Rock Cave, WY 26234
(phone: h-304 924-5802 w&fax- 304 924-6263)

Two sections of the proposed changes to WV NPDES regulations for coal mining (Title 47, Series 30) RE: remining operations prompt the following comments from the WV Highlands Conservancy (WVHC). For further clarification or discussion of the comments, please feel free to contact me at the address or phone numbers listed directly above.

Thank you for the opportunity to comment.

Cindy Rank

1) SECTION 2.34 "PRE-EXISTING DISCHARGE" DEFINITION:

Though Section 2.34 mirrors the pre-existing discharge definition in the Rahall Amendment of the Clean Water Act, used in the context of the WV state regs, it is unclear what "this subsection" refers to. The remainder of the definition is also a bit clumsy, - confusing at best and perhaps misleading - as written. WVHC suggests the following.

Assuming these regs do not necessarily have to define pre-existing discharges in general, but only as the term is used in connection with coal remining operations, the following language may be more appropriate:

"Pre-Existing Discharge" means any discharge which originates from a 'remined area' of a 'coal remining operation' and which existed at the time of permit application under section 301(p) of the Clean Water Act. Further, a pre-existing discharge "affected by the remining operation" is any pre-existing discharge where a demonstration can be made that a hydrological connection exists between the remining activity and the pre-existing discharge.

WVHC RE: WNPDES Remining Regs 8/21/96 p 2 of 2.

2. SECTION 6.2.4 MODIFIED EFFLUENT LIMITATION FOR COAL REMINING OPERATIONS.

a) To be consistent with Rahall, should the first sentence of this section also include a provision to modify limits of 'pre-existing discharges affected by the remining operation'?

i.e. "The Director may issue an NPDES Permit which modifies the effluent limitations for iron, manganese, or pH of any pre-existing discharge from the remined area of any coal remining operation or of any pre-existing discharge affected by the remining operation. [etc]....."

b) While specifying that the numerical effluent limitations shall be in accordance with the WV DEP Coal Remining Policy issued September 30, 1993 is correct, the final two words in the sentence, i.e. "as amended", are totally unacceptable. I cite at least two reasons why these words should be stricken.

1) However acceptable the 9/30/93 remining policy may be, the proposed language eliminates any assurance that that policy will be in effect even two days hence. For all its current weaknesses, the accepted 9/30/93 policy may be made even weaker, even totally decimated, by administrative action or whim this week - next month - next year without any public review, comment or discussion. The public cannot accept regulations for modifying effluent limits that are based on some elusive flibbertigibbetty guideline that may change at the drop of a hat.

2) During the 1995 WV Legislative Session, EPA was hesitant to accept the Environmental Quality Board's (EQB) proposed regulations for granting variances to numeric water quality standards for coal remining operations unless those regulations were based on some tangible, relatively stable state code or regulation RE: remining. If I am not mistaken, it took some convincing to get EPA to sign off on EQB regulations that were based on mere 'policy' alone. Tying those regulations to a specific policy approved on a specific date apparently allowed the regulations to go forward.

Since the proposed wording of Section 6.2.4 of DEP's NPDES regs for remining lets loose of that date certain and allows, instead, for wholesale change of that policy at any time, these regs undercut any assurances EPA had originally assumed as it acquiesced to the '95 EQB variance regs. for coal remining operations. Without such firm assurances, I would expect, and at least encourage EPA to withdraw it's approval of EQB regs thus leaving individual coal remining operations once again subject to the normal extended variance procedures that apply to most other activities as set forth in EQB regulations.

**The
West Virginia Mining and
Reclamation Association**

1624 Kanawha Blvd., E, Charleston, WV 25311

**and the
West Virginia Coal
Association**

1301 Laidley Tower, Charleston, WV 25301

comments in response to
The Proposed Legislative Rule
(WV/NPDES Regulations for Coal Mining)
47 CSR Series 30,
Division of Environmental Protection,
Office of Water Resources

August 21, 1996

I. ABOUT THE PUBLIC HEARING:

A. OUR REPRESENTATION:

The West Virginia Mining and Reclamation Association and the West Virginia Coal Association represent over 400 coal producing companies and associate member companies who provide products and services to the coal industry. Our comments on this proposed regulation are on behalf of all of the members of the WVMRA and the WVCA.

B. OUR APPRECIATION FOR THIS OPPORTUNITY:

Our members are grateful for this opportunity to offer suggested improvements to this rule.

II. BACKGROUND:

A. THE INDUSTRY:

The coal mining industry in West Virginia produced 167 million tons of high quality coal in 1995 for domestic and foreign use as an energy source for the production of electricity, steel and a host of other applications. Employment directly in West Virginia mines and indirectly in the mining support trades and the hundreds of millions of dollars of taxes generated by coal related sources are the **economic backbone** of the Mountain State.

A recent study found that one out of every ten payroll dollars in West Virginia comes from the coal industry. It was further revealed that one of every three business tax dollars being collected by the State comes directly from the coal industry.

Every influence which alters the production of West Virginia coal changes the fragile **competitive balance** between coal mines here and coal mines in other coal producing states and other nations. Therefore, every change in statutory or regulatory standard must be made with the potential economic impacts of those changes foremost in the minds of those considering such changes.

III. COMMENTS ON THE PROPOSED RULE:

A. GENERAL COMMENTS ABOUT REMINING:

"Remining" is often misunderstood. Remining is the process of revisiting the same property that was previously mined. This is made more practicable today because of advances in mining equipment, new mining techniques and improved coal preparation technology.

There have been several legislative initiatives, both state and federal, over the past 12 years promoting remining. They include: The Colombo Amendment (WV Legislature, 1983); Rahall Amendment (Congress, 1987); OSM legislation (Congress, 1990); and the National Energy Act (Congress, 1992). These acts included incentives to remine and recognized the benefits to the environment brought about by remining.

The most recent effort to promote remining has come from the federal Office of Surface Mining via speeches by Director Uram and the publication of a formal paper entitled "Remining Initiatives Summary For The Appalachian Region." This document catalogs many of the efforts by mining states and OSM to promote remining (see Attachment C).

In many parts of Northern West Virginia and some parts of Southern West Virginia, there is over 100 years of mining history with several degraded watersheds from a water quality point of view. During modern remining the pyritic material that is inherent in the coal is removed, while other toxic materials in the spoil or overburden can be selectively handled to avoid extensive contact with water.

Beaver Creek in Tucker County and Simpson Creek and Elk Creek in Central West Virginia are all excellent examples of watersheds that have benefited with improved water quality as a direct result of remining.

It is a consensus view that the watershed where remining takes place is "always" improved by the process. Therefore, remining is good for West Virginia and good for the Nation and every effort should be made to encourage it.

Senate Bill 287, passed by the West Virginia Legislature and signed by the Governor in 1995, reinforces the legislative history noted above by again encouraging the practice of remining by simplifying the process of obtaining a "variance". The note found following the last paragraph in SB 287 while it was being considered stated:

"NOTE: The purpose of this bill is to authorize the environmental quality board to grant site specific variances for coal remining operations from the current water quality standards. Currently each variance is promulgated as a new legislative rule. This delays the permit process for one year."

The Legislature clearly understood the value of remining to the environment and to the economy of the state. The spirit and intent of SB 287 was to encourage remining and establish a variance process which would be friendly to those coal operators who seek new permits on previously mined lands. The regulatory process supporting the remining effort to clean up the environment and improve existing water quality should certainly be user friendly.

B. SPECIFIC COMMENTS ABOUT THE PROPOSED RULE:

Number 1:

Section 47-30-2.12:

We offer the following as a substitute definition:

"2.12. "Coal Remining Operation" means a coal mining operation which begins after February 4, 1987 at a site on which mining was conducted prior to that date."

This definition references the date of passage of the federal Water Quality Act of 1987, in which "coal remining operations" were authorized special treatment relative to effluent standards (see Attachment A).

In the section entitled "**WATER QUALITY INCENTIVES**" in OSM's "Remining Initiatives Summary..." (see Attachment C) item number 35 reads as follows:

"35. Pre-February 4, 1987 Water Quality Exemptions:
Provide operations that remine sites mined prior to February 4, 1987, exemptions from water quality requirements."

OSM is clearly on point with this inclusion. OSM recognizes that in order to maximize the number of opportunities to remine and improve the Nation's water quality, the sites mined from date of the passage of the 1977 Act until the adoption of the Rahall Amendment must be included in the index of remining sites. Therefore, this proposed state rule should also recognize those opportunities and provide for them in this revised definition.

Number 2:

Section 47-30-2.34:

We concur with the wording in the first sentence, but offer the following as a substitute definition:

"2.34 "Pre-Existing Discharge" means any discharge at the time of permit application under this subsection. A pre-existing discharge may originate from within the remining operation or from outside the remining operation provided there is a demonstrated hydrological connection between the remining activity and the pre-existing discharge."

Our intent is to clarify that pre-existing discharges may have begun at a point inside the remining operation or from an off site area of old spoil, refuse or even from an underground seam above or below that seam being currently mined. Regardless, if the pre-existing discharge is hydrologically linked then it must be factored in the quality of the effluent leaving the remining site.

Number 3:

Section 47-30-6.2.4:

We concur with the wording in the first two sentences after the title, but offer the following as a substitute definition:

“6.2.4 Modified Effluent Limitations for Coal Remining Operations. The Director may issue an NPDES Permit which modifies the effluent limitations for iron, manganese, or pH of any pre-existing discharge from the remined area of any coal remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limits in each permit.”

We added the last proviso because it makes the sentence identical with 33 USCS 1311 (p) (1), the federal law with which we are seeking to comply (see Attachment B). We struck the last two sentences because the DEP drafter referenced the DEP Coal Remining Policy of September 30, 1993. Although the Director may issue a departmental policy describing how remining effluent standards will be measured, we believe it is inappropriate for a rule or regulation to reference such a non-legislative document. Statutes may generate regulations; regulations or statutes may generate policies; but policies should not be referenced as if they generate or drive regulations or statutes.

IV. SUMMARY:

Our comments are intended to improve the language of this rule. Legislative intent, both state and federal, and published comments from OSM, have all promoted and supported remining. We urge the employees of the Division of Environmental Protection to be major players in this effort.
(end of comments)

ATTACHMENTS THAT FOLLOW:

- A National Energy Act of 1992 (2 page excerpt)
- B Federal water quality statute (1 page excerpt)
- C Remining Initiatives Summary For the Appalachian Region

PUBLIC LAW 100-4 [H.R. 1]; February 4, 1987

WATER QUALITY ACT OF 1987

For Legislative History of Act, see p. 5.

An Act to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Water Quality Act of 1987.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENTS TO FEDERAL WATER POLLUTION CONTROL ACT; DEFINITION OF ADMINISTRATOR.

(a) SHORT TITLE.—This Act may be cited as the "Water Quality Act of 1987".

33 USC 1251 note.

(b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents; amendments to Federal Water Pollution Control Act; definition of Administrator.
- Sec. 2. Limitation on payments.

TITLE I—AMENDMENTS TO TITLE I

- Sec. 101. Authorizations of appropriations.
- Sec. 102. Small flows clearinghouse.
- Sec. 103. Chesapeake Bay.
- Sec. 104. Great Lakes.
- Sec. 105. Research on effects of pollutants.

TITLE II—CONSTRUCTION GRANTS AMENDMENTS

- Sec. 201. Time limit on resolving certain disputes.
- Sec. 202. Federal share.
- Sec. 203. Agreement on eligible costs.
- Sec. 204. Design/build projects.
- Sec. 205. Grant conditions; user charges on low-income residential users.
- Sec. 206. Allotment formula.
- Sec. 207. Rural set aside.
- Sec. 208. Innovative and alternative projects.
- Sec. 209. Regional organization funding.
- Sec. 210. Marine CSO's and estuaries.
- Sec. 211. Authorization for construction grants.
- Sec. 212. State water pollution control revolving funds.
- Sec. 213. Improvement projects.
- Sec. 214. Chicago tunnel and reservoir project.
- Sec. 215. Ad valorem tax dedication.

TITLE III—STANDARDS AND ENFORCEMENTS

- Sec. 301. Compliance dates.
- Sec. 302. Modification for nonconventional pollutants.
- Sec. 303. Discharges into marine waters.
- Sec. 304. Filing deadline for treatment works modification.
- Sec. 305. Innovative technology compliance deadlines for direct dischargers.
- Sec. 306. Fundamentally different factors.
- Sec. 307. Coal remaining operations.
- Sec. 308. Individual control strategies for toxic pollutants.
- Sec. 309. Pretreatment standards.
- Sec. 310. Inspection and entry.
- Sec. 311. Marine sanitation devices.
- Sec. 312. Criminal penalties.
- Sec. 313. Civil penalties.
- Sec. 314. Administrative penalties.
- Sec. 315. Clean lakes.

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(B) to affect the procedures and standards applicable to
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402(a)(1)(B) of the Federal Water Pollution Control Act, and

33 USC 1342.

(C) to affect the authority of any State to deny or condi-
tion certification under section 401 of such Act with respect
to the issuance of permits under section 402(a)(1)(B) of such
Act.

33 USC 1341.

SEC. 307. COAL REMINING OPERATIONS.

Section 301 is amended by adding at the end thereof the following:

Ante, p. 35.

"(p) MODIFIED PERMIT FOR COAL REMINING OPERATIONS.—

"(1) IN GENERAL.—Subject to paragraphs (2) through (4) of this
subsection, the Administrator, or the State in any case which
the State has an approved permit program under section 402(b),
may issue a permit under section 402 which modifies the
requirements of subsection (b)(2)(A) of this section with respect
to the pH level of any pre-existing discharge, and with respect
to pre-existing discharges of iron and manganese from the
remined area of any coal remining operation or with respect to
the pH level or level of iron or manganese in any pre-existing
discharge affected by the remining operation. Such modified
requirements shall apply the best available technology economi-
cally achievable on a case-by-case basis, using best professional
judgment, to set specific numerical effluent limitations in each
permit.

State and local
governments.

33 USC 1342.

"(2) LIMITATIONS.—The Administrator or the State may only
issue a permit pursuant to paragraph (1) if the applicant dem-
onstrates to the satisfaction of the Administrator or the State,
as the case may be, that the coal remining operation will result
in the potential for improved water quality from the remining
operation but in no event shall such a permit allow the pH level
of any discharge, and in no event shall such a permit allow the
discharges of iron and manganese, to exceed the levels being
discharged from the remined area before the coal remining
operation begins. No discharge from, or affected by, the
remining operation shall exceed State water quality standards
established under section 303 of this Act.

State and local
governments.

33 USC 1313.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) COAL REMINING OPERATION.—The term 'coal
remining operation' means a coal mining operation which
begins after the date of the enactment of this subsection at
a site on which coal mining was conducted before the
effective date of the Surface Mining Control and Reclama-
tion Act of 1977.

30 USC 1201
note.

"(B) REMINED AREA.—The term 'remined area' means
only that area of any coal remining operation on which coal
mining was conducted before the effective date of the Sur-
face Mining Control and Reclamation Act of 1977.

"(C) PRE-EXISTING DISCHARGE.—The term 'pre-existing dis-
charge' means any discharge at the time of permit applica-
tion under this subsection.

"(4) APPLICABILITY OF STRIP MINING LAWS.—Nothing in this
subsection shall affect the application of the Surface Mining
Control and Reclamation Act of 1977 to any coal remining
operation, including the application of such Act to suspended
solids."

enactment [enacted Feb. 7, 1987]. The applicant may amend the application to take into account the provisions of this subsection.

(6) Effect of submission of application. An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

(7) Effect of denial. If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

(8) Reports. Every 6 months after the date of the enactment of this subsection [enacted Feb. 7, 1987], the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 301 or 304 of this Act [33 USCS § 1311 or 1314] or any national categorical pretreatment standard under section 307(b) of this Act [33 USCS § 1317(b)] filed before, on, or after such date of enactment [enacted Feb. 7, 1987].

(o) Application Fees. The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of section 301, section 304(d)(4), and section 316(a) of this Act [33 USCS §§ 1311(c), (g), (i), (k), (m), (n), 1314(d)(4), 1316(a)]. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled "Water Permits and Related Services" which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.

(p) Modified permit for coal remining operations. (1) In general. Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 402(b) [33 USCS § 1342(b)], may issue a permit under section 402 [33 USCS § 1342] which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remaining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

(2) Limitations. The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 303 of this Act [33 USCS § 1313].

(3) Definitions. For purposes of this subsection—

(A) Coal remining operation. The term "coal remining operation" means a coal mining operation which begins after the date of the enactment of this subsection [enacted Feb. 4, 1987] at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

(B) Remined area. The term "remined area" means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

(C) Pre-existing discharge. The term "pre-existing discharge" means any discharge at the time of permit application under this subsection.

(4) Applicability of strip mining laws. Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal remining operation, including the application of such Act to suspended solids.

(As amended Feb. 4, 1987, P. L. 100-4, Title III, §§ 301(a)-(e), 302(a)-(d), 303(a), (b)(1), (c)-(f), 304(a), 305, 306(a), (b), 307, 101 Stat. 29; Nov. 18, 1988, P. L. 100-688, Title III, Subtitle B, § 3202(b), 102 Stat. 4154.)

REMINING INITIATIVES SUMMARY FOR THE APPALACHIAN REGION

INTRODUCTION:

The following summary provides information on remining initiatives of the States (including the Federal Tennessee program) located in the Appalachian region. This information was compiled through a review of information located in the files of OSM Field Offices and through informal discussions with State and Federal regulatory program officials. The first section of this summary provides a listing on a State by State basis of the remining initiatives that are currently in effect, and those that are in the process of being evaluated. The second section provides suggested future remining initiatives. This section was developed by reviewing the remining initiatives already undertaken by each State, and including additional measures suggested by State officials during the informal discussions held with team members. The final section of this summary consists of a compilation of all suggested remining incentives. This final listing included incentives already in approved programs, those currently under review, and those that Field Office and State representatives suggested through informal contact.

It is important for the reader to understand that these lists were developed through informal contact with OSM and State representatives over a two week period. They are not intended to represent a complete listing.

SECTION I. STATUS OF STATE REMINING INITIATIVES:

A review of State remining initiatives shows that there is considerable variation in the type and extent of activities being conducted. While some States promoted remining as a method to resolve environmental problems at abandoned minesites before 1977, the implementation of permanent regulatory programs under SMCRA has allowed the OSM to serve as a facilitator by offering uniform opportunities to enhance remining on a national/regional basis. The following is a list of the remining initiatives in the Appalachian Region currently in effect and those being developed on a State by State basis.

KENTUCKY

Remining Initiatives Currently in Effect

1. **AOC Variance:** Approximate original contour (AOC) variance on previous mined lands. On those lands that were mined prior to August 3, 1977, and not reclaimed to the Surface Mining Control and Reclamation Act (SMCRA) standards qualify for AOC variance. Must use all reasonably available spoil. 57 FR 45295 (October 1, 1992), 55 FR 53490 (December 31, 1990), 52 FR 49398 (December 31, 1987), 51 FR 30486

(August 27, 1986), 49 FR 65 (January 3, 1984)

2. **Revegetation Standard:** Sets revegetation standard for previous mined land not to be less than ground cover existing before redisturbance and shall be at least 80 percent with a statistical confidence of 90 percent with no signs of erosion. 58 FR 32283 (June 9, 1993), 47 FR 21404 (May 18, 1982)

3. **Topsoil Substitute:** For previous mined lands, a topsoil substitute can utilize those available materials that are most suitable for sustaining sufficient vegetation. A soils chemical and properties test for alternative topsoil must be done. 51 FR 7262 (March 3, 1986), 47 FR 21404 (May 18, 1982)

4. **Postmining Land Use:** For previous mined lands, the postmining land use shall be based on the highest and best use that can be achieved that is compatible with the surrounding areas and does not require the disturbance of areas previously unaffected by mining. 57 FR 45295 (October 1, 1992), 47 FR 21404 (May 18, 1982)

5. **Auger Mining Reclamation:** When auger mining on a previous mined land bench, the reclamation must abate adverse impacts, stabilize the site and enhance the land use. 51 FR 7262 (March 3, 1986)

6. **Bond Credits:** Kentucky's bond amount calculation includes a bond credit for remined areas of \$ 1,000 per acre.

7. **Bond Supplements:** Kentucky established an abandoned mine enhancement program to supplement operator bonds for remining on abandoned mine areas. The bond can be reduced up to fifty percent of the bond amount assessed on the property to be remined. This fund was established with civil penalty monies. Only two sites have used this incentive. 50 FR 22999 (May 30, 1985)

8. **Rahall Water Quality Changes:** Kentucky's program passed through the Rahall Amendment for alternative water quality standards to Kentucky's Division of water. One application has been approved in Kentucky.

9. **EPAct Unanticipated Event:** 1992 Energy Policy Act Remining Incentive: Unanticipated Event. Kentucky will not block a permit based on an "unanticipated event or condition" encountered on a remining operation. 60 FR 33110 (June 27, 1995)

10. **EPAct Revegetation Period:** 1992 Energy Policy Act Remining Incentive: Two Year Reveg. Standard. Lower the responsibility for successful revegetation to a period of two full years after the last year in which augmented seeding, fertilizing, irrigation, or other work occurs. 60 FR 33110 (June 27, 1995)

11. **EPAct AML Eligibility Standard:** 1992 Energy Policy Act Remining Incentive: AML Program Eligibility. Those lands eligible for remining would not affect the eligibility of those lands for abandoned mine land projects. 60 FR 33110 (June 27, 1995)

Special Note: Not all of the requested program amendment incentives were approved by OSM. Kentucky wanted to create "special reclamation permits" for remining that set their own permitting and performance standards. OSM denied the amendment because the developed regulations did not take into account general permitting provisions, environmental resource information, maps, mining and reclamation plans, specific performance standards, protection of the hydrologic balance, backfilling and grading

and revegetation. OSM recommended that Kentucky use existing regulations and evaluate the potential site against the approved regulations. OSM disapproved the program amendment April 9, 1990, 55 FR 13158. Kentucky was interested in "highwall swap" where pre-law bench would be reclaimed with SMCRA law spoil (leaving new cut highwall). Federal regulations prohibit this activity.

LFO met on October 17th with the State folks on a number of issues including remining. Carl Campbell and LFO talked about appointing a joint state-OSM team to work on the remining initiative for Kentucky. We talked about scheduling the first meeting of the team for the week of October 30 possibly in Whitesburg and to meet somehow with you and the Virginia folks to discuss your initiative in Virginia. We might also try to get over to see the Powell River Project. This will help initiate promotion of remining activities. Kentucky is very interested in developing demonstration projects.

Remining Initiatives In Process

The Lexington Field Office did not identify any remining initiatives that were currently under evaluation.

MARYLAND

The State of Maryland has not initiated any remining related statutes. Maryland does provide for reduced water quality standards on remined areas to encourage reclamation of adversely affected areas with pollutional discharges. Pursuant to the Energy Policy Act, Maryland has submitted an amendment to change their bond liability period from five to two years. Maryland has not, however, submitted any amendments to incorporate the other Energy Policy Act changes.

Remining Initiatives Currently in Effect

1. **Rahall Amendment For Water Quality:** COMAR 08.13.09.24B: Water Quality Standards and Effluent Limitations. Maryland's program allows for a modified NPDES permit for remining operations consistent with Section 301(p) of the Clean Water Act to reduce operator liability for remining of areas with pollutional discharges.
2. **AOC Variance:** COMAR 08.20.28.03: General Requirements For Backfilling and Grading. This section allows for backfilling and grading to be modified for previously mined lands with insufficient spoil.
3. **Postmining Land Use:** COMAR 08.02.30.01: Postmining Land Use. This section allows for post mining land use of remined areas to be judged based upon the basis of the best use that can be achieved that is compatible with surrounding areas.

Remining Initiatives In Process

1. **EPA Act Revegetation Standard: COMAR 08.20.14: Performance Bonds.** Maryland has a program amendment under review that will modify performance bond requirements to allow for the release of bonds after 2 years on remining areas.

HFO discussed the remining initiative with Maryland representatives and found that they support the idea of improving incentives. Maryland had no specific comments concerning the team other than to say that, when appropriate, they would like to participate in the process of improving opportunities for remining.

OHIO

Remining Initiatives Currently in Effect

1. AOC variances
2. Topsoil substitution
3. Highwall retention
4. Modified effluent standards
5. Alternative drainage controls
6. Reduced percentage of cover on remined areas
7. No cost contracts
8. Directly negotiated contracts with adjacent mine operators
9. "Unreclaimed Lands Permit" (in law but not used)
10. Has tracking and awards system for operators reclaiming AML sites
11. Reclamation in lieu of civil penalty assessment

Remining Initiatives In Process

1. **Reduce Pre-mining Sampling:** Program Amendment No. 66: Submitted to reduce number of premine samples on remined areas from 24 samplings to 12
2. **Remining Task Force:** Has established a new remining taskforce
3. **Lands Suitable Approach:** Identifying areas for remining and AMD abatement
4. **Permitting Incentives:** Creating permitting incentives
5. **Reduce Maintenance Period:** Processing rule to reduce maintenance period to two years

PENNSYLVANIA

Remining Initiatives Currently in Effect

1. **Reclamation Of Adversely Affected Section 522(e) Lands:** Pennsylvania Title 25, Subchapter D Areas Unsuitable For Mining: Sec. 86.102 Areas where mining is prohibited or limited (Based on Section 522(e) of SMCRA). On any lands within the State Park, State Forest, State Scenic Rivers or State Game Land system the Department may make a finding

that significant land and water conservation benefits will result and allow re-mining of previously mined lands.

2. **Permit Information Collection:** Pennsylvania Title 25, Chapter 86: Applications For Mine Permits. These regulations require in several places that mine permit applications identify previously mined areas.

3. **Postmining Land Use:** Pennsylvania Title 25, Chapter 87: Postmining land use. The provisions for postmining land use allow for previously mined lands to be evaluated on their use prior to any mining, or a higher and better use that is compatible with surrounding areas, when determining the standard to which lands must be reclaimed.

4. **Rahall Amendment For Water Quality Standards:** Pennsylvania Title 25, Chapter 87 Subchapter F (Surface Coal Mines) and Chapter 88 Subchapter G (Anthracite Coal Mines): Minimum Requirements for Re-mining Areas with Pollutational Discharges. These changes are based upon the ability to award a modified NPDES permit consistent with Section 301(p) of the Clean Water Act.

Remining Initiatives In Process

The following incentives were approved under Pennsylvania Act No. 1992-173 (Date: 1992) amending P.L.1198, No. 418 of May 31, 1945 entitled: Surface Mining Conservation and Reclamation Act. Purpose: To authorize a re-mining and reclamation incentive program, and to allow for government-financed reclamation contracts authorizing incidental and necessary coal extraction. OSM is now reviewing these.

1. **Establish alternative vegetative success requirements.** Vegetation requirements for previously mined areas - no less than existed before disturbance must control erosion.
2. **Areas Suitable For Re-mining Program.** Authorizes DER to declare areas suitable for re-mining. Authorizes DER to accept petition for area suitable for re-mining. Establishes need to get permit to re-mine in area declared suitable for re-mining.
3. **Re-mining Environmental Enhancement Fund** as sole source of revenue for program.
4. **Operators Re-mining Assistance Program.** Establishes program to assist operator to obtain re-mining permits.
5. **Develop Re-mining Incentives Criteria:** Develop regulations to provide for incentives and assistance to reclaim abandoned mine lands. Establishes criteria for participation in re-mining incentive programs. Establish a priority for participation in re-mining incentive program to those site in areas designated suitable for re-mining. Provides opportunity for operators with contiguous permits to make a proposal to reclaim forfeited area. Requires operator participating in the Financial Assurance Fund to pay per acre fee.
6. **Establish a Bond Credit Program for Re-mining.** Establishes a program to provide bond credit in form letter for voluntary reclamation of abandoned mine lands. Authorizes application of bond credit on other permits. Allows combination of bond credit and other bonds. Allow posting contract performance bond to support bond credit. Bond Credits not transferable. Establishes special account to finance program.
7. **Establish a Re-mining Environmental Enhancement Fund.** Establishes REEF as sole source of revenue for program. Establishes Fund through deposit of funds(\$1,000,000) from

specified sources.

8. **Establish Remining Financial Assurance Fund.** Authorize Governor to transfer(\$5,000,000) from Land Conservation Fund. Requires operator participating in the Financial assurance Fund to pay per acre fee.

9. **Requires formal report on remining.** Requires DER to prepare report on remining activity.

10. **Authorizes Incidental Coal Removal.** Mine permit exemption. Establishes site eligibility requirements. Requires contractor to post Bond to meet performance standards of PA SMCRA. Restricts coal removal at Government Financed Reclamation Contract in areas subject to restrictions.

The HFO discussed the remining initiative with Pennsylvania and found that they support the process of identifying further incentives. It appeared to be somewhat premature during these initial discussions to get a commitment from Pennsylvania on their role in the process. It appears that once the remining team has settled on an addenda/scope of work, then Pennsylvania will be in a better position to commit to a role.

TENNESSEE

Federal regulations and statutes available for remining operations.

VIRGINIA

Remining Initiatives Currently in Effect

1. **Excess Spoil Disposal On Pre-existing Benches:** Allows disposal of excess spoil on pre-existing benches within the permit area. (Va. 19.816.74)
2. **AOC Variance:** Establish standards for backfilling previously mined land with insufficient spoil to eliminate the highwall within the permit (Va. 19.816.106)
3. **Rahall Amendment For Water Quality:** Alternative effluent limitations for pollutional discharges from previously mined lands included within the permit. (Va. 19.785.19: Rahall Bill)
4. **Second Cut On Existing Highwalls:** The most significant reclamation of AML in Virginia is from mines taking additional cuts for economic benefit. (not applicable)

Remining Initiatives In Process

1. **No Cost Contracts:** Need to revise regs consistent with method used in Ohio.
2. **Redefine Reasonably Available Spoil Definition:** Need to revise regs. This proposal is controversial since highwalls would not be eliminated on second cut mining & excess spoil would be used to reclaim AML.
3. **Reduction of Grading & Compaction:** On mines where forest land is postmining land use. Need to revise regs. This concept is tied to coattails of remining issue by Va.

WEST VIRGINIA

Remining Initiatives Currently in Effect

1. **Coal Refuse Reprocessing:** CSR 38-2-3.14 provides for the reprocessing of abandoned coal refuse piles.
2. **Off Permit Spoil Disposal To AML Project (No Cost Contract?)** CSR 38-2-14.14© provides that excess spoil may be deposited outside the permit area on an approved abandoned mine land project conducted under the AML Program.
4. **AOC Variance:** CSR 38-2-14.16 provides certain exemptions (backfilling and grading, revegetation, etc.) for remining previously mined areas.
5. **Revegetation Standards:** CSR 38-2-14.16 provides certain exemptions (backfilling and grading, revegetation, etc.) for remining previously mined areas.
6. **Rahall Water Quality Amendment:** CSR 38-2-14.16(n) provides that remining operations may qualify for water quality exemptions set forth in section 301(p) of the Clean Water Act (Rahall Amendment).
7. **Reduce Bonding Costs:** CSR 38-2-11 provides for reduced performance bonds for surface mining operators who have successfully completed remining activities.
8. **Water Quality Standard Variances:** WV Code §22B-3-4 provides site specific variances to water quality standards for coal remining operations.
9. **SOAP Program Assistance:** CSR 38-2-17 contains the requirements for the State's Small Operator Assistance Program. Approximately 90 percent of the SOAP projects involve areas that have been previously mined.

Remining Initiatives In Process

West Virginia is not working on any new initiatives at this time. The State's most recent initiatives involved bond reductions for operators successfully completing remining activities and variances to water quality standards for remining operations.

Special Note: The following additional Information was provided by the Charleston Field Office: In general, State officials believe that we must first develop a sense of trust and cooperation with industry if remining is to succeed. Until operators are convinced that they will be treated fairly and not be held responsible for past environmental problems that are beyond their control, they will be reluctant to participate in remining activities. In addition, any remining initiative must provide operators some economic incentive if it is going to be successful. However, State officials maintain that the primary goal of remining should be environmental enhancement.

In response to Director Uram's request for a site that has the potential to be remined but faces legal obstacles, it was recommended that we consider the Cheyenne Sales project. This project involves an abandoned refuse pile in Upshur County. The pile consists of 25,000 tons of coal fines and 3,500 tons of coarse refuse. The State estimates that it will cost \$81,700 to reclaim the refuse area, haulroad and borrow area which total 5.68 acres. An operator has offered to reclaim the site at no cost to the

State by trucking the refuse to a cogeneration facility located in Grant Town. Under the State's approved program, this type of activity is considered to be a surface mining operation, and it would have to be permitted and bonded. This could delay reclamation and discourage the operator from undertaking the project.

Section II. SUGGESTED FUTURE REMINING INITIATIVES

The following list of suggested future re-mining initiatives represents a compilation of all of the ideas submitted with the State specific re-mining information above. Each suggestion is followed by a listing of the Field Office/State that identified it as a potential re-mining incentive. Just because a suggestion was not followed by a State designation DOES NOT mean that the State does not support the idea. This list was compiled from informal discussions, and due to the shortened development time, the States were not given the opportunity to review a complete list.

1. **Define "Reasonably Available Spoil":** Define to exclude stable and revegetated spoil from previous mining operations (TN, KY). Tennessee further suggested that only unstable and sparsely vegetated orphan spoils should be rehandled.
2. **Relax AMD Liability from orphan spoils.** This should include standards for surface and ground water.(TN)
3. **Reduce Operator Liability (OH, MD, PA)** Maryland feels very strongly that the real key to encouraging re-mining is to eliminate operator liability for the effect that re-mining has on pre-existing pollutional discharges.
4. **Exclude Orphan Spoils from Bond Amount:** Do not include the handling of orphan spoils in the calculation of the bond amount (TN).
5. **Relax Revegetation Standards.** This should include success standards and acceptable species (TN).
6. **Reduce AML Fees (TN, WV).**
7. **Reduce Bond Amount and/or Create Bonding Incentives (TN, OH, PA, WV).**
8. **Reduce Bond Liability Periods for bond release (TN).**
9. **Relax the Design Standards for Sediment Basins.** This would allow construction of smaller on-bench structures in conjunction with alternative sediment control measures (TN).
10. **Financial and Technical Assistance** for operators engaged in re-mining (OH, PA, WV).
11. **Conduct Outreach Program** for individual mining companies & properties to educate and develop other initiatives (VA).
12. **Create State Specific Re-mining Committees:** Continue the Va. Re-mining Committee consisting of The Nature Conservancy, VPI, OSM, & the Va DMLR to develop additional initiatives (VA)
13. **Create a Formal Re-mining Package:** A potential project in the area of re-mining is for the OSM and the States to develop a package pointing out all of the existing re-mining incentives. This package would be presented to industry to promote re-mining (KY)
14. **No Cost Contracts: (PA, WV, MD)**
15. **Site Specific Variances to Water Quality Standards. (WV)** West Virginia is willing to

consider the following long-term initiatives.

16. **Watershed Approach (WV)** Conduct remining activities on a watershed basis to focus resources and ensure that they produce the greatest benefit to the environment.
17. **Tax Incentives: (WV)** Provide tax (mineral/special reclamation/operational tax) refunds to operators who successfully complete remining activities.
18. **Promote Cogeneration Facility Construction: (WV)** Promote the construction of cogeneration facilities.
19. **Encourage Use of Remined Coal (WV)** Encourage utilities to purchase remined coal.
20. **Include Sites Forfeited After 1977 (WV)** Make remining requirements applicable to sites forfeited after 1977.
21. **Pre-February 4, 1987 Water Quality Exemptions:** Provide operations that remine sites mined prior to Feb 4, 1987, exemptions from water quality requirements.
22. **Raise SOAP Tonnage Limit. (WV)** Raise the tonnage limit for small operator assistance to 500,000 tons of coal per year and consider basing SOAP assistance on net worth.
23. **Have EPA Promulgate Rahall Amendment Regulations. (WV)**
24. **Water Quality Exemptions For Remining of Underground Mines: (WV)** Provide operations remining abandoned underground mines special exemptions from water quality requirements; and
25. **Reevaluate Clean Air Act Changes. (WV)**
26. **Designate Areas as Suitable for Remining:** Authorize State RAs to declare areas suitable for remining.
27. **Payment In Lieu Of Bond:** Establish program for payment in lieu posting bond for remining operators. Would allow operators to remine certain approved areas without posting a formal bond.
28. **Reclamation Bond Credits:** Establish a program to provide bond credit for voluntary reclamation of abandoned mine lands.
29. **Adjustment of Mine Permitting Fees:** Encourage State RA through financial assistance (or other mechanisms) to reduce or eliminate the administrative fees associated with permitting and maintenance of areas subject to remining.
30. **Forfeiture Reclamation Incentives:** Encourage State RA through financial assistance (or other mechanisms) to offer incentives (reduced fees, bond costs, etc) for mining operations that incorporate adjacent forfeited areas. This could include simple reclamation or additional coal recovery at the forfeited site.
31. **Federal Technical Assistance:** Approach other Federal agencies that have an interest in seeing areas remined to eliminate problems, and solicit their involvement in a program that would offer technical assistance to the States and to mining operators planning to remine certain areas. These agencies could cover a range of technical expertise (ie: water quality, Soils, wildlife, air quality, etc).

SECTION III: OVERVIEW OF POSSIBLE MINING INCENTIVES

This listing is a compilation of all the information submitted by the Field Offices. This includes the information informally collected from the States. Because of the wide variety of actual and potential incentives, the list is divided into four categories: Site Specific Incentives, Administrative Incentives, Water Quality Incentives, and Miscellaneous Incentives. The State codes following a listed incentive indicates that, for that State, it is either currently available or it is being processed.

SITE SPECIFIC RECLAMATION STANDARD INCENTIVES

1. **AOC Variance:** Implement Backfilling and Grading Standards in Federal Regulations to allow changes in final grading where insufficient spoil exists at the site. This may also mean that some highwall is retained at the site as in Ohio. (KY, MD, OH, VA, WV)
2. **Revegetation Coverage Standard:** Sets revegetation standard for previous mined land different from those of unmined lands. May include a standard that allows lesser vegetation as long as it is not less than ground cover existing before redisturbance. (KY, OH, PA, WV?)
3. **Topsoil Substitute:** For previous mined lands, a topsoil substitute can utilize those available materials that are most suitable for sustaining sufficient vegetation. (KY, OH)
4. **Postmining Land Use:** For previous mined lands, the postmining land use shall be based on the highest and best use that can be achieved that is compatible with the surrounding areas. (KY, MD, PA)
5. **Auger Mining Reclamation:** When auger mining on a previous mined land bench, the reclamation must abate adverse impacts, stabilize the site and enhance the land use. (KY)
6. **EPAct Revegetation Period Standard:** 1992 Energy Policy Act Remining Incentive: Two Year Reveg. Standard. Lower the responsibility for successful revegetation to a period of two full years. (KY, WV?)
7. **Reduce Maintenance Period:** Reduce maintenance period to two years (OH)
8. **Excess Spoil Disposal On Pre-existing Benches:** Allow disposal of excess spoil on pre-existing benches within the permit area. (VA)
9. **Encourage Second Cut On Existing Highwalls:** Significant reclamation of AML is from mines taking additional cuts for economic benefit. (VA)
10. **Redefine Reasonably Available Spoil Definition:** Revise regs. This proposal is controversial since highwalls may not be eliminated on second cut mining & excess spoil would be used to reclaim AML. (VA)
11. **Reduction of Grading & Compaction:** On mines where forest land is postmining land use. Need to revise regs. (VA)
12. **Relax Revegetation Standards.** This should include success standards and acceptable species.
13. **Reduce, Relax, or Eliminate AMD Liability from orphan spoils.** This could include standards for surface and ground water.
14. **Relax the Design Standards for Sediment Basins.** This would allow construction of smaller on-bench structures in conjunction with alternative sediment control measures.
15. **Site Specific Variances to Water Quality Standards.**

ADMINISTRATIVE INCENTIVE (BONDING, PERMITTING, ETC)

- 16 **Bond Credits:** Establish a program to provide bond credit for voluntary reclamation of abandoned mine lands. Variations could include application of bond credit on other permits, combination of bond credit and other bonds, posting contract performance bond to support bond credit, and non-transferrable Bond Credits. (PA, KY, WV)
17. **Bond Supplements:** (KY)
18. **EPAct Unanticipated Event:** 1992 Energy Policy Act Remining Incentive: Unanticipated Event. States will not block a permit based on an "unanticipated event or condition" encountered on a remining operation. (KY)
19. **EPAct AML Eligibility Standard:** 1992 Energy Policy Act Remining Incentive: AML Program Eligibility. Those lands eligible for remining would not affect the eligibility under AML Program. (KY)
20. **No Cost Contracts.** Allow the placement of spoil from an active mine onto adjacent AML lands through an agreement with the State AML Program. (OH, WV)
21. **Directly negotiated contracts with adjacent mine operators** (OH)
22. **"Unreclaimed Lands Permit" (in law but not used)** (OH)
23. **Has tracking and awards system for operators reclaiming AML sites** (OH)
24. **Reclamation in lieu of civil penalty assessment** (OH)
25. **Reduce Pre-mining Sampling:** Ohio Program Amendment No. 66: Submitted to reduce number of premine samples on remined areas from 24 samplings to 12.
26. **Permitting Incentives:** Creating permitting incentives (OH)
27. **Permit Information Collection:** Require mine permit applications identify previously mined areas.(PA)
28. **Exclude Orphan Spoils from Bond Amount:** Do not include the handling of orphan spoils in the calculation of the bond amount.
29. **Payment In Lieu Of Bond:** Establish program for payment in lieu posting bond for remining operators. Would allow operators to remine certain approved areas without posting a formal bond.
30. **Adjustment of Mine Permitting Fees:** Encourage State RA through financial assistance (or other mechanisms) to reduce or eliminate the administrative fees associated with permitting and maintenance of areas subject to remining.
31. **Forfeiture Reclamation Incentives:** Encourage State RA through financial assistance (or other mechanisms) to offer incentives (reduced fees, bond costs, etc) for mining operations that incorporate adjacent forfeited areas. This could include simple reclamation or additional coal recovery at the forfeited site.

WATER QUALITY INCENTIVES

32. **Rahall Amendment To Clean Water Act:** These changes are based upon the ability to award a modified NPDES permit consistent with Section 301(p) of the Clean Water Act. (KY, MD, OH, PA, VA, WV)
33. **Water Quality Standard Variances:** Provides site specific variances to water quality standards for coal remining operations. (WV)

34. **Water Quality Exemptions For Remining of Underground Mines:** Provide operations remining abandoned underground mines special exemptions from water quality requirements.
35. **Pre-February 4, 1987 Water Quality Exemptions:** Provide operations that remine sites mined prior to Feb 4, 1987, exemptions from water quality requirements.

MISCELLANEOUS INCENTIVES

36. **Remining Task Force:** Has established a new remining task force. (OH)
37. **Lands Suitable Approach:** Authorize States to declare areas suitable for remining. Authorizes DER to accept petition for area suitable for remining. Establishes need to get permit to remine in area declared suitable for remining Identifying areas for remining and AMD abatement. (OH, PA)
38. **Reclamation Of Adversely Affected Section 522(e) Lands:** On any lands within the State Park, State Forest, State Scenic Rivers or State Game Land system may make a finding that allows remining of previously mined lands. (PA)
39. **Establish Remining Fund.** Establish funding sources for encouraging remining initiatives and goals. Some initiatives may require funding to encourage implementation. (PA has Environmental Enhancement Fund)
40. **Operators Remining Assistance Program.** Establish program to assist operator to obtain remining permits. (PA)
41. **Develop Remining Incentives Criteria:** Establish criteria for participation in remining incentive programs. Establish a priority for participation in remining incentive program to those site in areas designated suitable for remining. Provide opportunity for operators with contiguous permits to make a proposal to reclaim forfeited area. (PA)
42. **Require formal report on remining.** Require OSM and States to prepare report on remining activity. (PA)
43. **Authorize Incidental Coal Removal.** Mine permit exemption for incidental coal removal. Require contractor to post Bond to meet performance standards of PA SMCRA. Restrict coal removal at Government Financed Reclamation Contract in areas subject to restrictions. (PA)
44. **Coal Refuse Reprocessing:** Provide for the reprocessing of abandoned coal refuse piles. (WV, PA)
45. **SOAP Program Assistance:** Encourage remining through the SOAP. (WV)
46. **Reduce AML Fees.**
47. **Financial Assistance To Operators:** Develop reasonable financial incentives or direct assistance to operators.
48. **Conduct Outreach Program** for individual mining companies & properties to educate and develop other initiatives.
49. **Create State Specific Remining Committees.**
50. **Create a Formal Remining Package:** A potential project in the area of remining is for the OSM and the States to develop a package pointing out all of the existing remining incentives. This package would be presented to industry to promote remining.
51. **Watershed Approach.** Conduct remining activities on a watershed basis to focus resources and ensure that they produce the greatest benefit to the environment.

52. **Tax Incentives:** Provide tax (mineral/special reclamation/operational tax) refunds to operators who successfully complete re-mining activities.
53. **Promote Cogeneration Facility Construction:** Promote the construction of cogeneration facilities.
54. **Encourage Use of Re-mined Coal:** Encourage utilities to purchase re-mined coal.
55. **Include Sites Forfeited After 1977:** Make re-mining requirements applicable to sites forfeited after 1977.
56. **Raise SOAP Tonnage Limit.** Raise the tonnage limit for small operator assistance to 500,000 tons of coal per year and consider basing SOAP assistance on net worth.
57. **Federal Technical Assistance:** Approach other Federal agencies that have an interest in seeing areas re-mined to eliminate problems, and solicit their involvement in a program that would offer technical assistance to the States and to mining operators planning to re-mine certain areas. These agencies could cover a range of technical expertise (ie: water quality, Soils, wildlife, air quality, etc).



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RE: Proposed amendments to 47 CSR 30

Dear Ken:

I have reviewed the proposed amendments to 46 CSR 30, the Coal NPDES Rule for remining operations and wish to submit the following comments for your consideration.

As you know, a bill was passed by the West Virginia Legislature in 1994 which authorizes the Environmental Quality Board (" Board") to grant variances from the numeric criteria for iron, manganese and pH in the Water Quality Standards rule (46 CSR 1) for remining activities. The law provides that where discharges from remining sites have the potential to improve water quality, but will not meet the water quality standards, a variance from those criteria may be granted by the Board. The Board has promulgated procedures for applying for such variances in 46 CSR 6, "Procedural Rules Governing Site Specific Revisions to Water Quality Standards."

While the "Rahall Amendment" to the federal Clean Water Act requires that discharges from remining activities must not exceed state water quality standards and the DEPs "Remining Policy" dated September 30, 1993 refers to the Board's variance procedure, there is no reference in the proposed rule indicating the need for an applicant for a remining permit to apply for a variance from the Board in the event that their discharge will exceed the existing water quality standards.

I suggest that section 47-30-6.2.4 might be an appropriate place to clarify that where discharges resulting from remining operations will not meet water quality standards, the permittee should submit an application for a variance from the Board and the application for a remining permit from DEP simultaneously to ensure compliance with the Clean Water Act. It might also be helpful to include in that section a reference to section 22B-3-4(c) of the West Virginia Code and to the requirements of 46 CSR 6. Both of these suggestions are intended to provide guidance to those seeking remining permits.

The Board looks forward to working with DEP in our review of remining variance requests.

Sincerely,

Libby Chatfield
Technical Advisor