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SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

Bureau of Environment
AGENCY: Division of Environmental Protection TITLE NUMBER: 47

CITE AUTHORITY §22-11-1 et. seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Kenneth Politan

17.40



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

December 18, 1996

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

RE: 47-CSR-30 -- "WV/NPDES Rules for Coal
Mining Facilities"

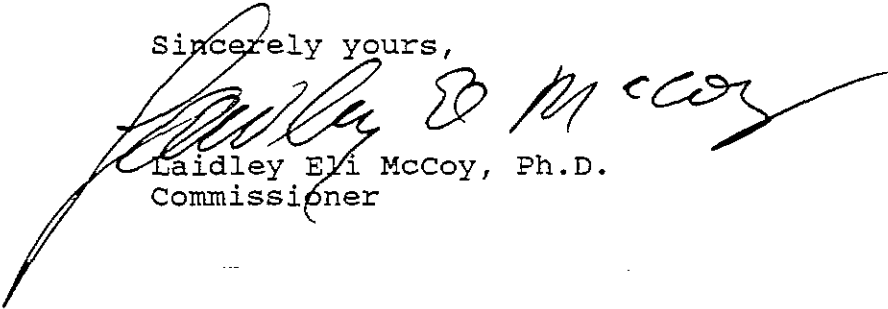
Dear Ms. Cooper:

This is to advise you that I am giving approval for filing with your office notice of rule modification of the above-referenced rule.

Please note that we have also taken the liberty of incorporating technical cleanup changes to this rule as part of our ongoing rule cleanup initiative.

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,


Laidley Eli McCoy, Ph.D.
Commissioner

LEM:cc

Attachment

cc: Mark Scott
Ken Politan
Carrie Chambers

**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



Date: July 17, 1996

Division of Environmental Protection

AMENDMENTS TO 47CSR30 - "WV/NPDES RULES FOR COAL
MINING FACILITIES"

The Abstract, as prepared by Legislative Rule-Making's Counsel, of the proposed amendments to 47CSR30 - "WV/NPDES Rules for Coal Mining Facilities" recommended two changes. The first change was to clarify "who's professional judgment." The second change was to incorporate the Remining Policy as an appendix to give the policy the force and effect of a rule. The agency responded to the two changes by proposing a definition of "Best Professional Judgment" and deleting from the rule the sentence referencing the Remining Policy.

The Legislative Rule-Making Review Committee accepted these changes at their meeting on Monday, December 9th, and also recommended an additional amendment by adding the phrase "including background water quality data" to be inserted in the definition "Best Professional Judgment."

[Technical cleanup of this rule has also been incorporated into this amendment package]

TITLE 47
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES - WASTE MANAGEMENT

FILED
DEC 20 12 33 PM '88
OFFICE OF WATER RESOURCES
SECRETARY OF STATE

SERIES 30
WV/NPDES REGULATIONS RULES FOR COAL MINING FACILITIES

§47-30-1. General.

1.1. Scope. -- These ~~regulations-rules~~ establish requirements implementing the powers, duties, and responsibilities of ~~Article 5A of Chapter 20 of the West Virginia Code~~ W. Va. 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)~~22-11-1 et. seq.

1.3. Filing Date. -- ~~April 1, 1988~~

1.4. Effective Date. -- ~~April 1, 1988~~

1.5. Applicability. -- ~~These regulations-rules 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. Invalidity. -- ~~If any provision of these regulations-rules 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 rules.~~

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

1.8. Promulgation ~~h~~History. -- ~~These regulations-rules originally beecome-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-rules were made effective on April 24, 1986 and on May 29, 1987.~~

1.9. Conflict of ~~i~~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.a. For the purposes of this paragraph:

1.9.a.1. "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.a.2. "Permit holders or applicants for a permit" does not include any department or agency of the State.

1.9.a.3. "Income" includes retirement benefits, consultant fees, and stock dividends.

1.9.a.4. 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 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 W. Va. Code §22-11-3~~ shall apply to these ~~regulations-rules~~ 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 5A11~~, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and pretreatment standards.

2.3. "~~Article 5A11~~" means the West Virginia Water Pollution Control Act, ~~Article 5A11~~, Section 1 et seq. -of Chapter ~~2022~~ of the West Virginia Code.

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. "Best Professional Judgement" or "BPJ" means the Director's highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data, including background water quality data. The treatment levels shall be established by the Director under the Clean Water Act (CWA) Sections 301 and 402.

2-62.7. "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).

2-72.8. "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.

2-82.9. "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 5A11, 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%) of the tonnage of minerals removed for purposes of commercial use or sale.

2-92.10. "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.

2-102.11. "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.

2-112.12. "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.

2-122.13. "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.

2-132.14. "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.

2-142.15. "Discharge" when used without qualification means the discharge of a pollutant.

2-152.16. "Discharge of a Pollutant" means:

~~2-15-a~~2.16.a. Any addition of any pollutant or combination of pollutants to waters of the State from any point source; and

~~2-15-b~~2.16.b. 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.

~~2-16~~2.17. "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.

~~2-17~~2.18. "Draft Permit" means a document prepared under Section 10.1 of these ~~regulations-rules~~ indicating the director's tentative decision to issue, modify, reissue, suspend or revoke a permit.

~~2-18~~2.19. "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.

~~2-19~~2.20. "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-rules~~ are covered under 40 C.F.R. Part 133.

~~2-20~~2.21. "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

~~2-21~~2.22. "Existing Source" means any coal mine, preparation plant and all refuse or waste therefrom:

~~2-21-a~~2.22.a. From which there is or may be a discharge of pollutants which commenced prior to September 19, 1977; and

~~2-21-b~~2.22.b. Which is not a new source.

~~2-22~~2.23. "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-rules~~.

~~2-23~~2.24. "General Permit" means a WV/NPDES permit authorizing a category of discharges within a geographical area.

~~2-24~~2.25. "Hazardous Substance" means any substance designated under 40 C.F.R. Part 116 pursuant to CWA Section 311.

~~2-252.26.~~ "Indirect Discharger" means a nondomestic discharger introducing pollutants to publicly owned treatment works.

~~2-262.27.~~ "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 rules~~ promulgated thereunder.

~~2-272.28.~~ "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.

~~2-282.29.~~ "Maximum Daily Discharge Limitation" means the highest allowable daily discharge.

~~2-292.30.~~ "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.

~~2-302.31.~~ "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.

~~2-30-a.2.31.a.~~ 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:

~~2-30-a.1.2.31.a.1.~~ Extraction of a coal seam not previously extracted by that mine;

~~2-30-a.2.2.31.a.2.~~ Discharge into a drainage area not previously affected by wastewater discharge from the facility covered under 40 C.F.R. Part 434;

~~2-30-a.3.2.31.a.3.~~ Extensive new surface disruption at the mining operation;
or

~~2-30-a.4.2.31.a.4.~~ A construction of a new shaft, slope, or drift.

~~2-30-b.2.31.b.~~ 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 rules~~.

~~2.30.e~~2.31.c. 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 rules.

~~2.31~~2.32. "Operator" means any person, firm, or company who is granted or who should obtain a WV/NPDES permit.

~~2.32~~2.33. "Owner" means the owner of the facility subject to regulation.

~~2.33~~2.34. "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.

2.35. "Pre-Existing Discharge" means any discharge at the time of permit application under this 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. 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.

~~2.35~~2.36. "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.

~~2.36~~2.37. "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.

~~2.37~~2.38. "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.

~~2.38~~2.39. "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.

~~2.39~~2.40. "Recommencing Discharger" means a source which recommences discharge after terminating operations.

~~2.40~~2.41. "Regional Administrator" means the Regional Administrator of Region III of the Environmental Protection Agency, or an authorized representative.

2.412.42. "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.

2.43. "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.

2.432.44. "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 ~~5A11~~, and regulations rules promulgated thereunder.

2.442.45. "Secretary" means the Secretary of the Army acting through his Chief of Engineers.

2.452.46. "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.

2.462.47. "State" means the State of West Virginia.

2.472.48. "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.

2.482.49. "Toxic Pollutant" means any pollutant listed as a toxic under CWA Section 307(a)(1) (see Appendix A of these regulations rules).

2.492.50. "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.

2.502.51. "West Virginia Surface Coal Mining and Reclamation Act" or WVSCMRA" means W. Va. Code §22-3, Article 3 of Chapter 22A of the West Virginia Code.

2.512.52. "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.

2.522.53. "WV/NPDES Permit" or "Permit" means an authorization issued by the director to implement the requirements of Article ~~5A11~~ including modifications to permits.

2.532.54. "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 ~~r~~Requirements; ~~e~~Exemptions; ~~p~~Prohibitions.

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

3.1.a.1. Discharge pollutants from a point source associated with any coal mine, preparation plant, and all refuse and waste therefrom;

3.1.a.2. 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.a.3. 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.a.4. 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; or

3.1.a.5. 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.b. A WV/NPDES permit issued pursuant to Section 3 of these ~~regulations~~-rules shall be deemed to be a permit issued in accordance with Article ~~5A11~~ and CWA.

3.1.c. No facility may be an indirect discharger.

3.2. Prohibition ~~a~~Against ~~i~~Issuing a WV/NPDES ~~p~~Permit.

3.2.a. A WV/NPDES permit may not be issued:

3.2.a.1. When the conditions of the permit do not provide for compliance with the applicable requirements of CWA and Article ~~5A11~~;

3.2.a.2. By the director where the Regional Administrator has objected to issuance of the WV/NPDES permit;

3.2.a.3. 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.a.4. For the discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste;

3.2.a.5. For any discharge inconsistent with a plan or plan amendment approved under CWA Section 208(b);

3.2.a.6. 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 ~~4.5.54.5.e.~~ of these ~~regulations~~ rules or has met the requirements for a variance under Section ~~4.5.64.5.f.~~ of these ~~regulations~~ rules;

3.2.a.7. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; or

3.2.a.8. To any facility which is an indirect discharger.

3.3. Denial of Permits. WV/NPDES permits may be denied for noncompliance with Article ~~5A11~~ or these ~~regulations~~ rules including the reasons specified in Section 8.4 of these ~~regulations~~ rules 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-1522-11-21~~.

3.4. Effect of a ~~p~~Permit.

3.4.a. 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 ~~5A11~~. However, a permit may be modified, reissued or revoked during its term for cause as set forth in Section 8 of these ~~regulations~~ rules.

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

3.5. Duration and ~~t~~Transferability of ~~p~~Permits.

3.5.a. 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.b. 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~~ rules. 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.b.6, ~~4.5.2-g~~4.5.b.7, and ~~4.5.2-i~~4.5.b.9 of these ~~regulations~~ rules, and the application forms were signed as required under Section 4.7 of these ~~regulations~~ rules. A determination of the application's completeness as set forth in Section 4.3 of these ~~regulations~~ rules shall not preclude the director from requesting additional information from the applicant during the subsequent substantive review. Permits extended under Section ~~3-5-23.5.b~~ of these ~~regulations~~ rules remain fully effective and enforceable. When a WV/NPDES permit is reissued the existing permit is automatically void.

3.5.c. Transfer of ~~p~~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~~48.2.c.1.D of these ~~regulations~~ rules, reissuing the permit under Section ~~8-3-3-e~~8.3.c.3. of these ~~regulations~~ rules or by an automatic transfer under Section ~~3-5-43.5.d~~ of these ~~regulations~~ rules. 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.d. Automatic ~~t~~Transfer of ~~p~~Permits. Any permit may be automatically transferred to a new permittee if:

3.5.d.1. 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.d.2. 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.d.3. The director does not notify the existing permittee and the proposed new permittee of his intent:

3.5.d.3.A. To deny the transfer request; ~~or~~

3.5.d.3.B. To require the transfer through permit modification; ~~or~~

3.5.d.3.C. To require the transfer through reissuance and require a new application be filed rather than approving the transfer; ~~and or~~

3.5.d.3.D. Notification under Section ~~3-5-4-e~~3.5.d.3. of these ~~regulations~~ rules 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~~3.5.d.1. of these ~~regulations~~ rules.

3.5.e. Permits Issued ~~a~~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 of Water Resources~~
Office of Water Resources.

3.6.a. The director shall administer and enforce all WV/NPDES or Article ~~5A11~~ permits relating to coal mines, preparation plants and all refuse and waste therefrom issued by the chief.

3.6.b. 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-rules~~ (May 30, 1985): **Provided**, That in the event of a conflict between an adopted NPDES permit and a WV/NPDES permit or Article ~~5A11~~ permit the more stringent provisions shall apply.

3.6.c. 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 ~~5A11~~. 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.d. Unexpired permits previously issued under Article ~~5A11~~ 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 ~~e~~Consolidation ~~p~~Program for WV/NPDES and WVSCMRA ~~p~~Permits.

3.7.a. Transition. Any WV/NPDES or Article ~~5A11~~ permit already in public notice pursuant to Article ~~5A11~~ on the original effective date of these ~~regulations-rules~~ (May 30, 1985) shall continue to be processed by the ~~Division of Water Resources~~ 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 Office of Water Resources. ~~Division of Water Resources~~.

3.7.b. Consolidation of ~~p~~Permit ~~p~~Processing.

3.7.b.1. Whenever a facility requires a permit under both WVSCMRA and Article ~~5A11~~, processing of two (2) or more applications for those permits may be consolidated.

3.7.b.2. Whenever the permits are jointly noticed, the public hearings under Section 9 of these ~~regulations-rules~~ and informal conferences under WVSCMRA may be held on the same day.

3.7.b.3. 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.b.4. Whenever a facility or activity requires additional permits under both of the statutes covered by these ~~regulations~~ rules, 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 ~~3-5-13.5.a.~~ 3.5.13.5.a. of these ~~regulations~~ rules. Processing of the subsequent applications for renewal permits may then be consolidated.

3.7.b.5. Any permittee who has either an NPDES, WV/NPDES, or Article ~~5A11~~ 5A11 permit must apply for reissuance in accordance with Section ~~4-4-14.4.a.~~ 4.4.14.4.a. of these ~~regulations~~ rules. 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 ~~3-5-23.5.b.~~ 3.5.23.5.b. of these ~~regulations~~ rules.

3.7.b.6. Any permittee who has either an NPDES, WV/NPDES, or Article ~~5A11~~ 5A11 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 ~~5A11~~ 5A11 permit when requesting renewal of the surface mining permit pursuant to WVSCMRA.

§47-30-4. Application For Permits.

4.1. Duty to ~~a~~Apply. Unless covered under a general permit issued in accordance with Section 13 of these ~~regulations~~ rules, any person discharging pollutants, proposing to discharge pollutants, or proposing to undertake any activity listed in Section ~~3-1-13.1.a.~~ 3.1.13.1.a. of these ~~regulations~~ rules 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~~ rules.

4.2. Responsible ~~p~~Party aApplies. 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 aApply.

4.4.a. 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 ~~5A11~~ permit.

4.4.b. Permit to aAbandon. Any person proposing to abandon a deep mine facility under W. Va. Code ~~§20-5A-5(b)(6)-22-11-8(b)(6)~~ and Section ~~3-1-1-e3.1.a.5.~~ of these ~~regulations~~ rules 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)-22-11-8(b)(6)~~ and Section ~~3-1-1-e3.1.a.5.~~ of these ~~regulations~~ rules shall apply for an abandonment permit with a request for Phase II bond release under WVSCMRA.

4.5. Information rRequired fFrom aApplicants.

4.5.a. Information rRequired fFrom aAll aApplicants. 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~~ rules.

4.5.a.1. The activities conducted by the applicant which require it to obtain a permit.

4.5.a.2. Name, mailing address, and location of the facility for which the application is submitted.

4.5.a.3. Up to four (4) Standard Industrial Classification (SIC) codes which best reflect the principal products or services provided by the facility.

4.5.a.4. 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.a.5. 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.a.6. 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.b. Information rRequired fFrom eExisting 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.b.1. 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.b.2. 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.e~~4.5.b.3 of these ~~regulations~~ rules. 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.b.3. 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.b.4. Intermittent flows. If any of the discharges described in Section ~~4.5.2.e~~4.5.b.3 of these ~~regulations~~ rules 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.b.5. 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.b.6. Effluent eCharacteristics. Information on the discharge of pollutants specified in Sections ~~4.5.2.f~~4.5.b.6.A through ~~4.5.2.f~~4.5.b.6.F of these ~~regulations~~ rules. 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.b.6.A. Mandatory Testing:

4.5.b.6.A.1. 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:

(BOD-5day);

4.5.b.6.A.1.(a) Biochemical Oxygen Demand

4.5.b.6.A.1.(b) Chemical Oxygen Demand (COD);

4.5.b.6.A.1.(c) Total Organic Carbon (TOC);

4.5.b.6.A.1.(d) Total Suspended Solids (TSS);

4.5.b.6.A.1.(e) Ammonia (as N);

4.5.b.6.A.1.(f) Temperature (both winter and summer);

4.5.b.6.A.1.(g) pH;

4.5.b.6.A.1.(h) Discharge Flow;

4.5.b.6.A.1.(i) Fecal Coliform (if believed present or if sanitary waste is or will be discharged);

4.5.b.6.A.1.(j) Total Residual Chlorine (if chlorine is used); and

4.5.b.6.A.1.(k) Oil and grease.

4.5.b.6.A.2. 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~~ 4.5.b.6.A.1. of these ~~regulations-rules~~ 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.b.6.B. Each applicant contributing to a discharge must report quantitative data for the pollutants listed in Appendix B of these ~~regulations-rules~~ in each outlet.

4.5.b.6.C. 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~~ 4.5.b.6.F. of these ~~regulations-rules~~) and must report for each outlet quantitative data for the following pollutants:

4.5.b.6.C.1. All pollutants listed in Appendix B or Appendix C of these ~~regulations~~ rules for which quantitative data is not otherwise required under Section ~~4.5.2.f.24.5.b.6.B.~~ of these ~~regulations~~ rules. 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.4.5.b.7.~~ of these ~~regulations~~ rules is not required to analyze for pollutants listed in Appendix C of these ~~regulations~~ rules.

4.5.b.6.C.2. All pollutants in Appendix D of these ~~regulations~~ rules. 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.b.6.D. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Appendix E of these ~~regulations~~ rules are discharged from each outlet (see Section ~~4.5.2.f.54.5.b.6.E.~~ of these ~~regulations~~ rules). 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.b.6.E. 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.b.6.E.1. 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.b.6.E.2. He knows or has reason to believe that TCDD is or may be present in an effluent.

4.5.b.6.F The requirements in Sections ~~4.5.2.f.34.5.b.6.C.~~ and ~~4.5.2.f.44.5.b.6.D.~~ of these ~~regulations~~ rules 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.b.7. ~~Small bBusiness eExemption.~~ 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~~4.5.b.6.C.1 of these ~~regulations rules~~ to submit quantitative data for the pollutants listed in Appendix C of these ~~regulations rules~~.

4.5.b.8. ~~Used or mManufactured tToxics.~~ 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.b.9. ~~Biological tToxicity tTests.~~ 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.b.10. ~~Contract aAnalyses.~~ If a contract laboratory or consulting firm performed any of the analyses required by Section ~~4.5.2.f.4.5.b.6~~ of these ~~regulations rules~~, the identity of each laboratory or firm and the analyses performed.

4.5.b.11. ~~Plan for aAbandonment.~~ The information required in a plan for abandonment pursuant to Section ~~4.5.4.5.d~~ of these ~~regulations rules~~.

4.5.b.12. ~~Discharges into nNoncomplying wWaters.~~ Compliance with Section ~~4.5.5.4.5.e~~ of these ~~regulations rules~~.

4.5.b.13. ~~Variances.~~ Compliance with Sections ~~4.5.6.4.5.f~~ and ~~4.5.7.4.5.g~~ of these ~~regulations rules~~ if applicable.

4.5.b.14. ~~Delayed sSubmission.~~ In case of reissuance applications, the director may grant permission to submit the information required by Sections ~~4.5.2.f.4.5.b.6~~, ~~4.5.2.h.4.5.b.8~~, and ~~4.5.2.i.4.5.b.9~~ of these ~~regulations rules~~ after the permit expiration date.

4.5.b.15. ~~Additional iInformation.~~ 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.c. Information ~~rRequired~~ for ~~nNew~~ ~~sSources~~.

4.5.c.1. 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 ~~4.5.14.5.a.~~ and ~~4.5.24.5.b.~~ of these ~~regulations~~ rules. Incorporation by reference of material supplied in the WVSCMRA application is permissible.

4.5.c.2. Any new source which is applying for a reissuance permit must submit an application consisting of the material required by Sections ~~4.5.14.5.a.~~ and ~~4.5.24.5.b.~~ of these ~~regulations~~ rules.

4.5.d. Plan for ~~a~~Abandonment and ~~a~~Application to a~~Abandon a~~ Mine.

4.5.d.1. Deep ~~m~~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~~ 4.5.b. or ~~4.5.3~~ 4.5.c. of these ~~regulations~~ rules shall provide a plan for abandonment which contains the following information:

4.5.d.1.A. A mine map to scale showing among other things:

4.5.d.1.A.1. 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.d.1.A.2. 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.d.1.A.3. Predicted final water elevation in the proposed mine;

4.5.d.1.A.4. Water level and its elevation in any adjacent mines;

4.5.d.1.A.5. 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.d.1.A.6. Proposed location of all mine seals and sectional dams if any;

4.5.d.1.A.7. All proposed mine portals and boreholes;

4.5.d.1.A.8. Surface and seam elevations of all mine openings;

4.5.d.1.A.9. The north line; and

4.5.d.1.A.10. General strike and dip direction of the mineral bed and the average dip.

4.5.d.1.B. 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~~4.5.d.1.A.1. of these ~~regulations~~ rules); 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.d.1.C. The type and number of permanent seals proposed, their design details and drawings, and the materials to be used for construction.

4.5.d.1.D. 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.d.1.E. 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.d.1.F. Any other information which the director may deem necessary to evaluate the water pollution potential of the facility.

4.5.d.1.G. The information required in West Virginia Code of State Rules, Administrative Regulations Department of Energy, Series 2, Section 7A.04, Office of Mining and Reclamation, Title 38, Series 2, Section 3.13.

4.5.d.2. 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 ~~63~~ shall be the plan for abandonment.

4.5.d.3. Plan for ~~a~~Abandonment; ~~r~~Reissuance. Unless waived in writing in whole or in part by the director, in addition to the information required by Sections ~~4.5.14.5.a~~ and ~~4.5.24.5.b~~ of these ~~regulations~~ rules, 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~~4.5.d.1. and ~~4.5.4.b~~4.5.d.2. of these ~~regulations~~ rules.

4.5.d.4. Application for ~~p~~Permit to ~~a~~Abandon.

4.5.d.4.A. For ~~d~~Deep ~~m~~Mines. An application for a permit to abandon shall contain the information requested under Sections ~~4.5.4.a~~4.5.d.1. and ~~4.5.4.b~~4.5.d.2. of these ~~regulations~~ rules updated to show final determinations which reflects current knowledge on each item: **Provided**, That where the information submitted under Sections ~~4.5.4.a~~4.5.d.1. and ~~4.5.4.b~~4.5.d.2. of these ~~regulations~~ rules has not significantly changed, further updating will not be required, and the following:

4.5.d.4.A.1. A statement from the applicant which predicts the likelihood of a discharge from the abandoned mine;

4.5.d.4.A.2. 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~~4.5.d.1. of these ~~regulations~~ rules; and

4.5.d.4.A.3. 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.d.4.B. 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.e. 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.e.1. There are sufficient remaining pollutant load allocations to allow for the discharge; and

4.5.e.2. 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.e.3. That the applicant qualifies for an alternate water quality based effluent limitation by making an adequate demonstration to the director pursuant to West Virginia Code of State Rules—Administrative Regulations, Water Resources Board West Virginia Environmental Quality Board, Series 1, Section 8.

4.5.f. 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~~4.5.f.1. through ~~4.5.6.d~~4.5.f.4. of these ~~regulations~~ rules are promulgated at 40 C.F.R. Part 125.

4.5.f.1. 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~~ rules. The request shall explain how the requirements of 40 C.F.R. Part 125, Subpart D have been met.

4.5.f.2. Nonconventional ~~p~~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.f.2.A. 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.f.2.B. Submitting a completed request no later than the close of the public comment period under Section 10.2 of these ~~regulations~~ rules 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.4.5.g.2. of these ~~regulations~~ rules.

4.5.f.2.C. Requests for variance from effluent limitations not based on effluent limitation guidelines need only comply with Section 4.5.6.b.24.5.f.2.B. of these ~~regulations~~ rules and need not be preceded by an initial request under Section 4.5.6.b.14.5.f.2.A. of these ~~regulations~~ rules.

4.5.f.3. Innovative ~~t~~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~~ rules 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.f.4. Water ~~q~~Quality ~~r~~Related ~~e~~Effluent ~~l~~imitations. A modification to any water quality related effluent limitation under CWA Section 302(b)(2) of 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~~ rules on the permit from which the modification is sought.

4.5.g. Expedited ~~v~~Variance ~~p~~rocedures and ~~t~~ime ~~e~~xtensions.

4.5.g.1. Notwithstanding the time requirements in Section 4.5.64.5.f. of these ~~regulations~~ rules, 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.g.2. A discharger who cannot file a complete request required under Section ~~4.5.6.b.24.5.f.2.B~~ of these ~~regulations~~ rules 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 ~~k~~Keeping by a 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 p~~ermit~~ a~~pplications~~ and r~~eports~~.

4.7.a. Applications. All permit applications shall be signed as follows:

4.7.a.1. For a corporation: by a responsible corporate officer. For the purpose of Section 4.7 of these ~~regulations~~ rules, a responsible corporate officer means:

4.7.a.1.A. 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.a.1.B. 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.a.2. For a partnership or sole proprietorship: by a general partner or the proprietor.

4.7.b. Reports. All reports required by WV/NPDES permits, and other information requested by the director for compliance with Article ~~5A~~11, shall be signed by a person described in Section ~~4.7.14.7.a~~ of these ~~regulations~~ rules, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

4.7.b.1. The authorization is made in writing by a person described in Section ~~4.7.14.7.a~~ of these ~~regulations~~ rules;

4.7.b.2. 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.b.3. The written authorization is submitted to the director.

4.7.c. Changes to a Authorization. If an authorization under Section ~~4.7.24.7.b~~ of these ~~regulations-rules~~ 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 ~~4.7.24.7.b~~ of these ~~regulations-rules~~ 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.d. Certification. Any person signing a document under Section ~~4.7.14.7.a~~ or ~~4.7.24.7.b~~ of these ~~regulations-rules~~ 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 ~~f~~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-rules~~ must be given in the permit.

5.1. Duty to ~~e~~Comply; ~~p~~Penalties.

5.1.a. The permittee must comply with all conditions of a WV/NPDES permit. Permit noncompliance constitutes a violation of CWA and Article ~~5A11~~ 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.b. 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.c. The Clean Water Act and Article ~~5A11~~ 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 ~~5A11~~, 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 ~~5A11~~, 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.d. 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.e. The Clean Water Act and Article ~~5A11~~ 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.f. 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.g. Nothing in Section 5.1 of these ~~regulations-rules~~ shall be construed to limit or prohibit any other authority the director may have under Article ~~5A11~~ or Article ~~63~~ of the West Virginia Code, or to relieve the permittee from any responsibilities, liabilities or penalties for not complying with West Virginia Code of State Rules, Administrative Regulations, Water Resources Board West Virginia Environmental Quality Board, Series 1 and 3.

5.2. Duty to ~~r~~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 ~~h~~Halt or ~~r~~Reduce a ~~a~~Activity ~~n~~Not a ~~d~~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 ~~m~~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 ~~e~~Operation and ~~m~~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 ~~a~~Actions. The WV/NPDES permit may be modified, reissued, suspended, or revoked for cause (see Section 8 of these ~~regulations~~ rules). 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 ~~3-5-33.5.c.~~ of these ~~regulations~~ rules.

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

5.9. Duty to ~~p~~Provide ~~i~~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 ~~e~~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.a. 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.b. Have access to and copy at reasonable times, any records that must be kept under the conditions of the permit;

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

5.10.d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by Article ~~5A11~~, any substances or parameters at any location.

5.11. Monitoring and ~~r~~Records.

5.11.a. 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.b. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

5.11.c. 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.d. Records of monitoring information shall include:

5.11.d.1. The date, exact place, and time of sampling or measurements;

5.11.d.2. The individual(s) who performed the sampling or measurements;

5.11.d.3. The date(s) analyses were performed;

5.11.d.4. The individual(s) who performed the analyses; if a commercial laboratory is used, the name and address of the laboratory;

5.11.d.5. The analytical techniques or methods used; and

5.11.d.6. The results of such analyses.

5.11.d.7. This information need not be submitted to the director, unless requested, but should be retained in accordance with Section ~~5.11.35.11.c.~~ 5.11.c. of these ~~regulations~~ rules.

5.11.e. 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.f. 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.g. 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~~ rules.

5.13. Reporting ~~R~~Rquirements.

5.13.a. Planned ~~e~~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 of quantity of the discharge, or qualify that facility for designation as a new source under Section 2.30 of these ~~regulations~~ rules.

5.13.b. Anticipated ~~n~~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.c. Compliance ~~s~~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.d. Immediate ~~r~~Reporting.

5.13.d.1. The permittee shall report any noncompliance with the WV/NPDES permit or Article 5A11 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~~ 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.d.2. The following shall also be reported immediately but not later than twenty-four (24) hours after:

5.13.d.2.A. Any unanticipated bypass (see Section ~~5.14.15.14.a~~ of these ~~regulations~~ rules) which exceeds any effluent limitation in the permit;

5.13.d.2.B. Any spill or accidental discharge (upset), as defined in Section 5.15 of these ~~regulations~~ rules, shall be reported to the director via the ~~Division-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; and:

5.13.d.2.C. 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.d.3. The director may waive the written report required under Section ~~5.13.4.b-5.13.d.2~~ of these ~~regulations~~ rules on a case-by-case basis if the oral report has been received in accordance with the above.

5.13.d.4. Notification Levels. The permittee must notify the director in writing as soon as they know or have reason to believe:

5.13.d.4.A. 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.d.4.A.1. One hundred micrograms per liter (100 ug/l);

5.13.d.4.A.2. 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.d.4.A.3. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section ~~4.5.2.f~~4.5.b.6 of these ~~regulations~~ rules; and

5.13.d.4.A.4. The level established by the director in accordance with Section ~~6.2.86.2.h~~ of these ~~regulations~~ rules.

5.13.d.4.B. 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.d.4.B.1. Five hundred (500) micrigrams per liter (500 ug/l);

5.13.d.4.B.2. One milligram per liter (1 mg/l) for antimony;

5.13.d.4.B.3. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section ~~4.5.2.f~~4.5.b.6 of these ~~regulations~~ rules; or

5.13.d.4.B.4. The level established by the director in accordance with Section ~~6.2.86.2.h~~ of these ~~regulations~~ rules.

5.13.d.4.C. 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~~4.5.b.8 of these ~~regulations~~ rules.

5.13.e. Other ~~n~~Noncompliance. The permittee shall report all instances of noncompliance not reported under Sections ~~5.11.5~~5.11.e, ~~5.11.6~~5.11.f, ~~5.11.7~~5.11.g, ~~5.13.3~~5.13.c, and ~~5.13.4~~5.13.d of these ~~regulations~~ rules at the time monitoring reports are submitted. The reports shall contain the information listed in Section ~~5.13.4.a~~5.13.d.1 of these ~~regulations~~ rules.

5.13.f. Net ~~l~~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.g. Other ~~i~~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.a. Definitions.

5.14.a.1. "Bypass" means the intentional temporary diversion of waste streams from any portion of a treatment facility, ~~and~~

5.14.a.2. "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.b. Bypass ~~n~~Not ~~e~~Exceeding ~~l~~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 ~~5-14-35~~ 5.14.c. and ~~5-14-45~~ 5.14.d. of these ~~regulations~~ rules.

5.14.c. Notice.

5.14.c.1. Anticipated ~~b~~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.c.2. Unanticipated ~~b~~Bypass. If the permittee does not know in advance of the need for a bypass, notice shall be submitted as required in Section ~~5-13-45~~ 5.13.d. of these ~~regulations~~ rules.

5.14.d. Prohibition of ~~b~~Bypass ~~e~~Exceeding ~~l~~Limitations.

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

5.14.d.1.B. 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.d.1.C. The permittee submitted notices as required under Section ~~5.14.3~~5.14.c of these ~~regulations~~ rules.

5.14.e. Approval of ~~b~~Bypass ~~e~~Exceeding ~~l~~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-5.14.d.1~~ of these ~~regulations~~ rules.

5.15. Upset.

5.15.a. 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.b. Effect of an ~~u~~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.c-5.15.3~~ of these ~~regulations~~ rules 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.c. Conditions ~~n~~Necessary for a ~~d~~Demonstration of ~~u~~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.c.1. An upset occurred and that the permittee can identify the cause(s) of the upset;

5.15.c.2. The permitted facility was at the time being properly operated;

5.15.c.3. The permittee submitted notice of the upset as required in Section ~~5.13.4.b-25.13.d.2.B~~ of these ~~regulations~~ rules; and

5.15.c.4. The permittee complied with any remedial measures required under Section 5.4 of these ~~regulations~~ rules.

5.15.d. Burden of ~~p~~Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

5.16. Reopener ~~e~~Clause. In accordance with W. Va. Code ~~§20-5A-1422-11-20~~, 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)-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 ~~s~~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 ~~s~~Sources.

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

5.18.d. When a WV/NPDES permit is issued to a new source, the protection period of Section ~~4-2-112.2.a~~ 12.2.a of these ~~regulations~~ rules 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~~ rules shall apply and the following terms shall mean:

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

5.19.b. "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.c. "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.d. "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 5A11~~, and Section 6 of ~~these regulations rules~~.

6.1.a. 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 10-2-210.2.b~~ of ~~these regulations rules~~ 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 ~~l~~imitations. Each WV/NPDES permit shall include conditions meeting the following requirements when applicable:

6.2.a. 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 rules~~ (Protection Period).

6.2.b. Other ~~e~~ffluent ~~l~~imitations and ~~s~~tandards ~~u~~nder 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 rules~~ to modify or reissue the permit to conform to the toxic effluent standard or prohibition.

6.2.c. Water ~~q~~uality ~~s~~tandards. Any more stringent requirements necessary to achieve water quality standards established pursuant to CWA or ~~Article 5A11~~ or ~~regulations rules~~ 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.d. Modified Effluent Limitations for Coal Remining Operations. The Director may issue a 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 limitations 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.e. Reopener eClause. 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 rules~~) 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.f. Water eQuality mManagement pPlans. 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.g. 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 ~~4.5.64.5.f.~~ of these ~~regulations rules~~).

6.2.h. Toxic pollutants limitations established under Sections ~~6.2.16.2.a., 6.2.26.2.b., or 6.2.36.2.c.~~ of these ~~regulations rules~~, to control pollutants meeting the criteria listed in Section ~~6.2.7.a.6.2.h.1.~~ of these ~~regulations rules~~. Limitations will be established in accordance with Section ~~6.2.7.b.6.2.h.2.~~ of these ~~regulations rules~~. An explanation of the development of these limitations shall be included in the fact sheet.

6.2.h.1. Limitations must control all toxic pollutants which:

6.2.h.1.A. The director determines, based on information reported in a permit application under Sections ~~4.5.2.f4.5.b.6.~~ and ~~4.5.2.h4.5.b.8.~~ of these ~~regulations rules~~ or in a notification under Section ~~5.13.4.d5.13.d.4.~~ of these ~~regulations rules~~ 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.h.1.B. The discharger does or may use or manufacture as an intermediate, final product, or by-product.

6.2.h.2. The requirement that the limitations control the pollutants meeting the criteria of Section ~~6.2.7.a.6.2.h.1.~~ of these ~~regulations rules~~ will be satisfied by:

6.2.h.2.A. Limitations on those pollutants; or

6.2.h.2.B. Limitations on other pollutants which, in the judgment of the director, will provide the necessary treatment of the pollutants.

6.2.i. Notification Level. A "notification level" which exceeds the notification level of Section ~~5.13.4.d~~5.13.d.4 of these ~~regulations~~ rules, 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.j. Immediate Reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under Section ~~5.13.4.b~~5.13.d.2.C of these ~~regulations~~ rules 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.k. Monitoring Requirements. In addition to the requirements of Section 5.11 of these ~~regulations~~ rules, all WV/NPDES permits shall specify:

6.2.k.1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods);

6.2.k.2. 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.k.3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in Section ~~6.2.10.d~~6.2.k.4 of these ~~regulations~~ rules. Reporting shall be no less frequent than specified in the Section ~~6.2.10.e~~6.2.k.5 of these ~~regulations~~ rules; and:

6.2.k.4. To assure compliance with permit limitations, requirements to monitor:

6.2.k.4.A. The volume of effluent discharged from each outlet; and

6.2.k.4.B. Other measurements as appropriate, including pollutants in internal waste streams under Section 7.8 of these ~~regulations~~ rules; pollutants in intake water for net limitations under Section 7.7 of these ~~regulations~~ rules; frequency rate of discharge for noncontinuous dischargers under Section 7.4 of these ~~regulations~~ rules; and pollutants subject to notification requirements under Section ~~5.13.4.d~~5.13.d.4 of these ~~regulations~~ rules.

6.2.k.5. 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.l. Best Management Practices to control or abate the discharge of pollutants when:

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

6.2.1.2. Numeric effluent limitations are infeasible; or

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

6.2.m. Reissued ~~p~~Permits.

6.2.m.1. Except as provided in Section ~~6.2.12.b.6.2.m.2.~~ of these ~~regulations~~ rules, 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.m.2. 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.m.1.~~ of these ~~regulations~~ rules shall apply unless:

6.2.m.2.A. 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.m.2.B. The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (CWA Section 301(b)(2)(E));

6.2.m.2.C. 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.m.2.D. 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.n. Navigation. Any conditions that the Secretary considers necessary to ensure that navigation and anchorage will not be substantially impaired.

6.2.o. Schedules of ~~e~~Compliance. The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA, Article ~~5A11~~, and ~~regulations~~ rules promulgated thereunder.

6.2.o.1. 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.o.2. 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 ~~6.2.146.2.o.~~ of these ~~regulations~~ rules. 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.o.3. Interim ~~d~~ates. 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.o.4. 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.o.5. 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 ~~6.2.46.2.e.~~ of these ~~regulations~~ rules are applicable.

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

7.1. Outlets and ~~d~~ischarge ppoints. 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.b6.3.k.2.~~ and Section 7.8 of these ~~regulations~~ rules. 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~~ rules.

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.a. 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.b. 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.c. All approved analytical methods for the metal inherently measures its dissolved form.

7.3. Continuous ~~d~~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 ~~d~~Discharges. Discharges which are not continuous shall be particularly described and limited, considering the following factors, as appropriate:

7.4.a. Frequency;

7.4.b. Total mass;

7.4.c. Maximum rate of discharge of pollutants during the discharge; and

7.4.d. 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 ~~w~~Water. Except as provided in Section 7.7 of these ~~regulations~~ rules, effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

7.7. Net limitations.

7.7.a. 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.a.1. 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.a.2. 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.b. 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.c. 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.d. 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.e. The provisions of Section 7.7 of these ~~regulations-rules~~ do not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

7.8. Internal ~~w~~Waste ~~s~~Streams.

7.8.a. 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-rules~~ shall also be applied to the internal waste streams.

7.8.b. Limits on internal waste streams will be imposed only when the fact sheet under Section 11 of these ~~regulations-rules~~ 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 ~~p~~Pollutants into ~~w~~Wells, ~~u~~Underground ~~m~~Mines, or by ~~l~~Land ~~a~~Application.

7.9.a. Calculations of ~~e~~Effluent ~~l~~Limitations (~~g~~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.b. Calculations of ~~e~~Effluent ~~l~~Limitations (~~s~~Specified). The provisions of Section ~~7.9-17.9.a~~ of these ~~regulations-rules~~ 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.c. The provisions of Section ~~7.9-17.9.a~~ of these ~~regulations-rules~~ do not alter a discharger's obligation to meet any more stringent requirements established under Section 5 or 6 of these ~~regulations-rules~~.

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

8.1. General.

8.1.a. 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~~ rules. 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.b. 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.a. 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~~ rules 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.b. If the director tentatively decides to modify a permit and the modification is made under Section ~~8.2.3.b~~ 8.2.c.2 of these ~~regulations~~ rules, he or she shall prepare a draft permit under Section 10.1 of these ~~regulations~~ rules, follow the public notice procedures in Section 10.2 of these ~~regulations~~ rules, and shall follow the procedural requirements in Section 812 of Article ~~5A11~~. The draft permit shall fulfill the requirement of notice under Section 812 of Article ~~5A11~~. 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.c. Causes for ~~m~~Modification.

8.2.c.1. Minor ~~m~~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~~ 8.2.c.1.A through ~~8.2.3.a-10~~ 8.2.c.1.J of these ~~regulations~~ rules, without preparing a draft permit under Section 10.1 of these ~~regulations~~ rules, or following the procedures of Section 10 or 11 of these ~~regulations~~ rules or the procedures in Section 812 of Article ~~5A11~~. Minor modifications may:

8.2.c.1.A. Correct typographical errors;

8.2.c.1.B. Require more frequent monitoring or reporting by the permittee;

8.2.c.1.C. 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.c.1.D. 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.c.1.E. 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.c.1.F. 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.c.1.G. Allow disposal system equipment substitution when the substituted equipment would not alter the degree of treatment required by the permit;.

8.2.c.1.H. Allow rerouting of discharging lines when the rerouted line would not discharge to a different receiving stream and would not require new or different permit conditions;.

8.2.c.1.I. Allow relocation of elements of treatment facilities or disposal systems, due to topography or equipment failures; or.

8.2.c.1.J. When the WV/NPDES or NPDES permit becomes final and effective after March 9, 1982, conform to Sections 5.5, ~~5.13-15.13.a.~~, ~~5.13.4.b~~5.13.d.2., ~~5.13.4.d~~5.13.d.4., 5.14, and ~~5.15.3.a~~5.15.c.1. of these regulations rules.

8.2.c.2. Major ~~m~~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 rules and the public notice procedures of Section 10.2 of these regulations rules. 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.c.2.A. 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 rules.

8.2.c.2.B. 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.c.2.C. New ~~r~~Regulations or ~~j~~Judicial ~~d~~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.c.2.C.1. For promulgation of amended standards or regulations, when:

8.2.c.2.C.1.(a) The permit condition to be modified was based on a promulgated effluent limitation guideline or water quality standards; and

8.2.c.2.C.1.(b) 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.c.2.C.1.(c) 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.c.2.C.2. 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.c.2.D. Compliance ~~s~~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.c.2.E. 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-a4.5.f.1.~~ of these ~~regulations~~ rules.

8.2.c.2.F. Toxics. When required to incorporate an applicable CWA Section 307(a) toxic effluent standard or prohibition.

8.2.c.2.G. Reopener. When required by the "reopener" conditions in a permit, which are established in the permit under Section ~~6-2-46.2.d.~~ of these regulations rules.

8.2.c.2.H. 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 rules.

8.2.c.2.I. 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.c.2.J. 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.c.2.K. Notification Levels. To establish a "notification level" as provided in Section ~~5-13-4.d~~ 5.13.d.4 of these regulations rules.

8.2.c.2.L. Failure to notify a Affected state. Upon failure of the director to notify another state as required by Section ~~10-2-410.2.d.~~ of these regulations rules 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.c.2.M. Correction of mistakes. To correct technical mistakes, such as errors in calculation or mistaken interpretations of law made in determining permit conditions.

8.2.c.2.N. Unable to meeet 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.c.2.O. BPJ Limits too ecostly. 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.a. General.

8.3.a.1. The director may reissue WV/NPDES permits prior to their expiration date for any cause specified in Section 8.3 of these regulations rules. 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.a.2. 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~~ rules and the public notice procedures of Section 10.2 of these ~~regulations~~ rules. Processing of a reissuance application does not exempt the permittee from compliance with any permit term or condition.

8.3.b. Reissuance ~~Based on~~ Permittee Request or Agreement. The following are causes for reissuance of a permit when the permittee requests or agrees:

8.3.b.1. All causes for modification listed under Section ~~8.2.3.b~~ 8.2.c.2 of these ~~regulations~~ rules.

8.3.b.2. The WV/NPDES permit will expire within eighteen (18) months and the permittee has submitted an application for reissuance which is approvable.

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

8.3.c.1. Cause exists for suspension or revocation of the WV/NPDES permit under Section 8.4 of these ~~regulations~~ rules and the director determines reissuance is appropriate;

8.3.c.2. The facility has an Article ~~5A11~~ permit which was issued prior to July 1, 1974 which does not have an expiration date;

8.3.c.3. 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; ~~or~~

8.3.c.4. Conditions exist which allow reopening and reissuance of the permit under Section 5.16 of these ~~regulations~~ rules.

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~~ rules. 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~~ rules. The following may be causes for revocation or suspension of a permit during its term, or for denying a permit reissuance application:

8.4.a. Noncompliance by the permittee with any condition of the WV/NPDES permit or Article ~~5A11~~; ~~or~~

8.4.b. 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.c. 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.d. 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); or.

8.4.e. Revocation of a permit issued under WVSMRCA.

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

9.1. Designation of ~~m~~Major ~~f~~Facilities.

9.1.a. 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.b. Facilities designated as major will be informed at the time of permit issuance.

9.1.c. Such facilities will be subject to special requirements as set forth in Section 9.2 of these ~~regulations~~ rules.

9.2. Special ~~r~~Requirements for ~~m~~Major ~~f~~Facilities.

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

9.2.a.1. Will have a fact sheet prepared on them pursuant to Section 11 of these ~~regulations~~ rules whenever a draft permit is issued for them;

9.2.a.2. 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~~ rules to both the director and the Regional Administrator;

9.2.a.3. Will be annually subject to either a Compliance Sampling Inspection (CSI), Compliance Evaluation Inspection (CEI) or Performance Audit Inspection (PAI); and

9.2.a.4. Will have copies of compliance inspection reports and correspondence regarding noncompliance forwarded to EPA.

9.2.b. All facilities classified as major, solely by the director, will be subject to an annual inspection under Section ~~9.2.1~~ 9.2.a.3. of these ~~regulations~~ rules.

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

10.1. General.

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

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

10.1.b.1. All applicable conditions under Sections 5 and 6 of these ~~regulations~~ rules;

10.1.b.2. All monitoring requirements; and

10.1.b.3. Effluent limitations, standards, prohibitions and conditions and all variances under Section 14 of these ~~regulations~~ rules that are to be included.

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

- 10.2. Public ~~n~~Notice, ~~e~~Comment, and ~~h~~Hearings.

10.2.a. Public ~~n~~Notice.

10.2.a.1. Scope.

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

10.2.a.1.B. Public notices may describe more than one permit or permit action.

10.2.a.1.C. Public notice shall be given of any hearing granted under Section 10.3 of these ~~regulations~~ rules.

10.2.a.2. Timing.

10.2.a.2.A. 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.a.2.B. 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.b. Reopening of the ~~p~~Public ~~e~~Comment ~~p~~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.c. 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 ~~10.2.1.b.10.2.a.2.A~~ of these ~~regulations rules~~, 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.10.2.d.1.A~~ and ~~10.2.4.a.210.2.d.1.B~~ of these ~~regulations rules~~. A WV/NPDES permit may not be issued until such affidavit is received.

10.2.d. Methods. In addition to the requirements of Section ~~10.2.310.2.c~~ of these ~~regulations rules~~, public notice of the draft permit shall be given by the following methods:

10.2.d.1. By the applicant mailing a copy of a notice to the following persons:

10.2.d.1.A. 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 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.d.1.B. 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.d.1.B.1. For RCRA: ~~The Division Office of Waste Management of the West Virginia Department of Natural Resources and the West Virginia Air Pollution Control Commission; and the Office of Air Quality of the West Virginia Division of Environmental Protection;~~

10.2.d.1.B.2. For UIC: ~~The Division Office of Water Resources and of the West Virginia Department of Energy~~ Division of Environmental Protection;

10.2.d.1.B.3. For 404: The United States Army Corps of Engineers, Pittsburgh District or Huntington District; and

10.2.d.1.B.4. For PSD: ~~The West Virginia Air Pollution Control Commission~~ Office of Air Quality.

10.2.d.1.C. To any unit of local government having jurisdiction over the area where the facility is proposed to be located;

10.2.d.1.D. 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.d.1.E. Any person otherwise entitled to receive notice under Section ~~10.2.4.a~~10.2.d.1 of these ~~regulations-rules~~ may waive his rights to receive notice for any classes and categories of permits.

10.2.d.2. The director shall send the public notice to persons on a mailing list which is developed by:

10.2.d.2.A. Including those who request in writing to be on the list;

10.2.d.2.B. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

10.2.d.2.C. 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.d.3. In addition to the general public notice described in Section ~~10.2.5~~10.2.e of these ~~regulations-rules~~, all persons identified in Sections ~~10.2.4.a.1~~10.2.d.1.A and ~~10.2.4.a.2~~10.2.d.1.B of these ~~regulations-rules~~ 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.e. Contents.

10.2.e.1. All ~~p~~Public ~~n~~Notices. All public notices issued under Section 10.2 of these ~~regulations-rules~~ shall contain the following minimum information:

10.2.e.1.A. Name and address of the office processing the permit action for which notice is being given;

10.2.e.1.B. 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.e.1.C. 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.e.1.D. 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.e.1.E. 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.e.1.F. 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; and.

10.2.e.1.G. Any other information considered necessary or proper.

10.2.e.2. Public ~~Notices~~ for ~~Hearings~~. In addition to the general public notice requirements of Section ~~10.2.5.a~~10.2.e.1 of these ~~regulations rules~~, a public notice of a public hearing shall contain the following information:

10.2.e.2.A. Reference to the date of previous public notices relating to the permit;

10.2.e.2.B. Date, time, and place of the hearing; and

10.2.e.2.C. A brief description of the nature and purpose of the hearing, including applicable rules and procedures.

10.2.f. Public ~~eComments~~ and ~~Requests~~ for ~~Public Hearings~~. During the public comment period provided under Section ~~10.2.1~~10.2.a of these ~~regulations rules~~, 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 rules~~.

10.3. Public ~~Hearings~~.

10.3.a. 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.b. 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~~10.2.a.2.A of these ~~regulations rules~~ shall automatically be extended to the close of any public hearing held under the provisions of Section 10.3 of these ~~regulations rules~~.

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

10.4. Response to ~~eComments~~.

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

10.4.a.1. Specify which provisions of the draft permit have been changed in the final permit decision and the reasons for the change; and

10.4.a.2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing.

10.4.b. The response to comments shall be available to the public.

10.5. Public ~~e~~Comment by ~~g~~Government ~~a~~Agencies.

10.5.a. 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~~ rules 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.b. 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~~ 11.

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

10.6. Public ~~a~~Access to ~~i~~nformation. 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 ~~s~~heet ~~p~~reparation. A fact sheet shall be prepared for every draft permit for:

11.1.a. A major facility or activity;

11.1.b. Every general permit;

11.1.c. Every draft permit that incorporates a variance; ~~and~~

11.1.d. Every draft permit which the director finds is the subject to widespread public interest or raises major issues; ~~and~~

11.1.e. 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 sSheet eContents. The fact sheet shall include, when applicable:

11.2.a. A brief description of the type of facility or activity which is the subject of the draft permit;:-

11.2.b.. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being discharged;:-

11.2.c. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;:-

11.2.d. Reasons why any requested variances or alternatives to required standards do or do not appear justified;:-

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

11.2.e.1. The beginning and ending dates of the comment period under Section 10.2 of these ~~regulations~~ rules and the address where comments will be received;

11.2.e.2. Procedures for requesting a hearing and the nature of that hearing;
and

11.2.e.3. Any other procedures by which the public may participate in the final decision.

11.2.f. Name and phone number of a person to contact for additional information;:-

11.2.g. 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;:-and

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

11.2.h.1. Limitations to control toxic pollutants under Section ~~6.2.76.2.g~~ 6.2.76.2.g of these ~~regulations~~ rules;

11.2.h.2. Limitations on internal waste streams under Section 7.8 of these ~~regulations~~ rules;:-or

11.2.h.3. Limitations on indicator pollutants under 40 C.F.R. §125.3(g);

11.2.h.4. Limitations set on a case-by-case basis under 40 C.F.R. §125.3(c)(2) or §125.3(c)(3); or

11.2.h.5. 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~~ rules:

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

12.1.b. "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 eCompliance with nNew sSource pPerformance sStandards.

12.2.a. Except as provided in Section ~~12.2.2~~ 12.2.b. of these ~~regulations~~ rules, 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.a.1. Ten (10) years from the date that construction is completed; ~~or~~

12.2.a.2. Ten (10) years from the date the source begins to discharge process or other nonconstruction related wastewater; or

12.2.a.3. 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.b. The protection from more stringent standards of performance afforded by Section ~~12.2.3.a~~ 12.2.c.1. of these ~~regulations~~ rules does not apply to:

12.2.b.1. 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.b.2. 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.b.3. 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.c. When a WV/NPDES permit is issued to a source with a "protection period" under Section ~~12.2.1~~12.2.a. of these ~~regulations~~rules 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.d. 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~~6.2.n.2. of these ~~regulations~~rules.

12.2.e. 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 ~~n~~New ~~s~~Source ~~d~~Determination.

12.3.a. 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~~rules, and:

12.3.a.1. Is constructed at a site at which no other source is located; ~~or~~

12.3.a.2. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

12.3.a.3. 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.b. A source meeting the requirements of Section ~~12.3.1.e~~12.3.a.3. of these ~~regulations~~rules is a new source only if a new source performance standard is independently applicable to it.

12.3.c. Construction on a site at which an existing source is located results in a modification subject to Section ~~8.2.3.b~~8.2.c.2 of these ~~regulations-rules~~ 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~~12.3.a.2 or Section ~~12.3.1.e~~12.3.a.3 of these ~~regulations-rules~~ but otherwise alters, replaces, or adds to existing process or production equipment.

12.3.d. Construction of a new source as defined under Section ~~2.30.32.30.c~~ of these ~~regulations-rules~~ has commenced if the owner or operator has:

12.3.d.1. Begun or caused to begin as part of continuous on-site construction program;

12.3.d.1.A. Any placement, assembly, or installation of facilities or equipment; or

12.3.d.1.B. 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.d.2. 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 rules~~, 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.a. Area. The general permit may be written (10) to cover a category of discharges described in the permit under Section ~~13.1.2~~13.1.b of these ~~regulations rules~~, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

13.1.a.1. Designated planning areas under CWA Sections 208 and 303;

13.1.a.2. City, county, or state political boundaries;

13.1.a.3. State highway systems;

13.1.a.4. Standard metropolitan statistical area as defined by the U.S. Office of Management and Budget; or

13.1.a.5. Any other appropriate division or combination of boundaries.

13.1.b. Sources. The general permit may be written to regulate, within the area described in Section ~~13.1.a.13.1.1~~ 10.1.a of these ~~regulations~~ rules, a category of point sources from coal mines, preparation plants, and refuse areas that:

13.1.b.1. Involve the same or substantially similar types of operations;

13.1.b.2. Discharge the same types of wastes;

13.1.b.3. Require the same effluent limitations or operation conditions;

13.1.b.4. Require the same or similar monitoring; and

13.1.b.5. In the opinion of the director, are more appropriately controlled under a general permit than under individuals permits.

13.1.c. If the director tentatively decides to issue a general permit, he or she shall prepare a draft general permit under Section ~~10.1.10.1.a~~ 10.1.a of these ~~regulations~~ rules.

13.2. Administration.

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

13.2.b. 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~~ rules. Cases where an individual permit may be required include the following:

13.2.b.1. The discharger is not in compliance with the conditions of the general permit;

13.2.b.2. 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.b.3. Effluent limitation guidelines are promulgated for point sources covered by the general permit;

13.2.b.4. A water quality management plan containing requirements applicable to such point sources is approved; or

13.2.b.5. The requirements of Section 13.1 of these ~~regulations~~ rules are not met.

§47-30-14. Decision On Variance.

14.1. Actions by ~~d~~Director.

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

14.1.a.1. After consultation with the Regional Administrator, extensions under CWA Section 301(k) based on the use of innovative technology; or

14.1.a.2. Variances under CWA Section 316(a) for thermal pollution.

14.1.b. 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.b.1. A variance based on the economic capability of the applicant under CWA Section 301(c); or

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

14.1.c. 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.c.1. A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based; or

14.1.c.2. A variance based upon certain water quality factors under CWA Section 301(g).

14.2. Actions by EPA.

14.2.a. 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~~14.2.b. of these ~~regulations~~rules that is forwarded by the director.

14.2.b. The EPA deputy assistant administrator for water enforcement may approve or deny any variance request submitted under Section ~~14.2.1~~14.2.a. of these ~~regulations~~rules. 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.c. The Administrator (or his delegate) may grant or deny a request for a variance listed in Section ~~14.1.3~~14.1.c. of these ~~regulations~~rules 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 may be enforced by all of the applicable provisions in ~~Article 5A and Article 6 of the West Virginia Code~~ W. Va. Code §22-11-3, including:

15.1.a. Orders or notices issued by the director in accordance with Sections ~~7, 8, 10, and 12~~ A11, 12, 15, and 19 of Article ~~5A~~ A11;

15.1.b. Civil penalties appropriate to the violation and injunctive relief in accordance with Section ~~1722~~ of Article ~~5A~~ A11; and

15.1.c. Criminal penalties in accordance with Section ~~1924~~ of Article ~~5A~~ A11.

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

15.2.a. Investigating and providing a written response to all signed, written complaints from citizens;

15.2.b. Not opposing intervention by any citizen in an Article ~~5A~~ A11 proceeding when permissive intervention is authorized by statute or rule; and

15.2.c. 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~~ A11 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

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

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

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

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)

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

APPENDIX A continued

Toxic Pollutants under CWA Section 307(a)

55. Polynuclear aromatic hydrocarbons:
 - Benzanthracenes
 - Benzopyrenes
 - Benzofluoranthene
 - Chrysenes
 - Dibenzanthracenes
 - 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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
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

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



DIVISION OF ENVIRONMENTAL PROTECTION

CECIL H. UNDERWOOD
GOVERNOR

10 McJunkin Road
Nitro, WV 25143-2506

JOHN E. CAFFREY
DIRECTOR

WATER POLLUTION CONTROL MR-5 APPLICATION

General Instructions

(Revised 8/96)

1. The application consists of twelve (12) modules and a copy of the instructions. These modules are:
 - Module 1 - General Information
 - Module 2 - Outlet Information
 - Module 3 - Surface and Ground Water
 - Module 4 - Mining Information - Deep Mines
 - Module 5 - Mining Information - Surface Mines
 - Module 6 - Preparation Plant/Prep Plant Associated Areas
 - Module 7 - Chemical Treatment
 - Module 8 - Abandonment of Deep Mine
 - Module 9 - Disposal of Sewage from New Sewage Facility
 - Module 10 - Disposal of Sewage from Existing Sewage Facility
 - Module 11 - Modification
 - Module 12 - Reissuance

2. For a first time application:
 - a. For deep mine only Complete modules 1, 2, 3, 4, 7 and 8
 - b. For surface mine only Complete modules 1, 2, 3, 5, and 7
 - c. For preparation plant or prep plant associated area (including refuse area, loadout area and tipple) Complete modules 1, 2, 3, 6 and 7
 - d. For a prep plant or prep plant associated area to be included with a deep mine or surface mine Add module 6 to modules required under 2a or 2b above
 - e. If there is an existing sewage facility at the deep mine/surface mine/prep plant Add module 10 to modules required under 2a, 2b or 2c above
 - f. If a sewage facility is to be added Complete module 9 and submit to Health Department

3. For modification of a state NPDES permit Complete modules 1 and 11

4. For reissuance of a state NPDES permit where there are no changes since last permit application for modification Complete modules 1 and 2 and update map and abandonment plan

5. For reissuance of a state NPDES permit where there is alternation since last permit or modification Complete modules 1, 2, and 12

6. For abandonment of a deep mine Complete modules 1, 2, and 8

7. ALL WATER QUALITY ANALYSIS MUST BE PERFORMED IN ACCORDANCE WITH EPA TESTING PROCEDURES, 40 CFR, PART 136 AND METALS, ACIDITY AND ALKALINITY MUST BE REPORTED IN TOTAL CONCENTRATIONS.

WATER POLLUTION CONTROL APPLICATION

Module 1 - General Information

I. Applicant information:

A. Applicant name _____

Address _____

Phone _____

B. Is the name listed above also the owner of the facility?

 Yes (go to Item I-D) No (Complete I-C)

C. Name and address of owner _____

D. Applicant contact: (name and title) _____

Phone (area code and number) _____

E. Status of operator (Check the appropriate category, if "other" specify)

 Federal State Private Public Other (specify) _____

II. Facility information:

Facility Name _____

Facility Mailing Address: _____

City, State and Zip Code _____

Facility Location:

Street, Route No. or other specific identifier _____

City, Town or nearest Post Office _____ County _____

III. A. Applicant requests the following action from DEP (check the appropriate category):

- Issue new state NPDES permit
 Reissue existing state NPDES permit (go to IV)
 Modify existing state NPDES permit (complete modules 1 and 11)

B. The applicant believes that the facility and discharges therefrom fall under one of the following categories (Check the applicable category)

- New Source - i.e. means a facility covered under 40 CFR Part 434, including an abandoned mine which is being mined, the construction of which commenced after September 19, 1977 or which is determined to constitute a major alteration. See WVN/PDES regulations Title 47, Series 30, Section 2.30.
- Existing Source - i.e. means a coal mine, prep plant and all refuse or waste therefrom: (a) from which there is or may be a discharge of pollutants which commenced prior to September 19, 1977; and (b) which is not a new source.

C. This application is for (check one or more as appropriate):

- | | | |
|---------------------------------|---|---|
| Open and operate: | <input type="checkbox"/> a deep mine | <input type="checkbox"/> a surface mine |
| Construct, install and operate: | <input type="checkbox"/> a treatment facility | <input type="checkbox"/> a load out area |
| | <input type="checkbox"/> a preparation facility | <input type="checkbox"/> a tipple |
| | <input type="checkbox"/> a refuse disposal area | |
| Operate an existing: | <input type="checkbox"/> deep mine | <input type="checkbox"/> surface mine |
| | <input type="checkbox"/> a preparation facility | <input type="checkbox"/> a tipple |
| | <input type="checkbox"/> a refuse disposal area | <input type="checkbox"/> a sewage disposal system |
| | <input type="checkbox"/> loadout area | |
| Reopen and operate: | <input type="checkbox"/> a deep mine | <input type="checkbox"/> a surface mine |
| | <input type="checkbox"/> a preparation facility | <input type="checkbox"/> a tipple |
| | <input type="checkbox"/> a refuse disposal area | <input type="checkbox"/> a sewage disposal system |
| | <input type="checkbox"/> loadout area | |
| Modify: | <input type="checkbox"/> a deep mine | <input type="checkbox"/> a surface mine |
| | <input type="checkbox"/> a preparation facility | <input type="checkbox"/> a tipple |
| | <input type="checkbox"/> a refuse disposal area | <input type="checkbox"/> a sewage disposal system |
| | <input type="checkbox"/> loadout area | |

D. The applicant will:

- Discharge pollutants from a point source associated with any coal mine, preparation plant, and all refuse and waste therefrom
- 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
- Acquire, construct, install, modify or operate a disposal system or part therefrom for the direct or indirect discharge or deposit of treated waste or effluent from any facility into the waters of this state, or any extension to or addition to such disposal system
- 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
- Construct, install, modify, open, reopen, operate or abandon a mine, coal preparation plant or coal preparation plant associated area
- Operate a sewage disposal system
- Discharge untreated water to waters of the state
- Discharge treated water to the waters of the state
- Dispose of refuse, sludge/slurry, etc.
- Abandon a mine
- Carry out the following operation (specify): _____
-

IV. Reissuance of Existing Permits

Since issuance of the existing permit have any outlets been added; any treatment or disposal system modified or added to in any way; volume or concentration of the waste(s) or waste stream(s) increased; or the facility extended, modified or added to?

- Yes (Complete modules 1, 2 and 12)
- No (Complete modules 1 and 2 and update mine map and abandonment plan)

V. SIC Code: 1211

VI. Existing or necessary environmental permits for this facility:

Issuing Agency	Type of Permit	Permit or ID Number	Date Issued	Expiration Date
WV DEP Office of Water Resources	WV/NPDES			
WV DEP Office of Mining and Reclamation	SMCRA			
WV DEP Office of Water Resources	Solid Waste			
WV Health Department	Sewage			
U.S. Environmental Protection Agency	NPDES			
WV Public Lands Corporation				
U.S. Army Corps of Engineers	General			
U.S. Army Corps of Engineers	General			

VII. Map or drawing (designate as Exhibit A):

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, 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. This information may be shown on the mine site topographic map submitted with WVDEP MR-4 application forms.

VIII. 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 of 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.

Signature _____ Date _____

Name and official title (type or print) _____

4. Details and drawings of each treatment unit. (Continue on additional sheets if necessary.)

C. Except for storm runoff, leaks, or spills, are any of the discharges described in Items II-B intermittent or seasonal?
 No Yes (Complete the following table)

Outlet # (list)	Operation(s) Contributing Flow (list)	Frequency		Flow				
		Days/Wk (avg.)	Month/Yr (avg.)	Flow Rate (in mgd)		Total Volume (specify units)		
				Long Term Avg.	Maximum Daily	Long Term Avg.	Max Daily	Duration (in days)

III. Improvements

Are you now required by any Federal, State or local authority to meet any implementation schedule for the construction, upgrading or operation of wastewater treatment equipment or practices or any other environmental programs which may affect the discharges described in this application? This includes, but is not limited to, permit conditions, administrative or enforcement orders, enforcement compliance schedule letters, stipulations, court orders, and grant or loan conditions?
 No Yes (Complete the following table)

Identification of Condition, Agreement etc.	Affected Outlets		Brief Description of Project	Final Compliance Date	
	No.	Source of Discharge		Required	Projected

IV. Intake and Effluent Characteristics

A, B and C - FOR EACH OUTLET complete one set of tables IV-A, IV-B or IV-C. An analysis of intake water should be performed only where the applicant seeks an effluent limitation based on the "net/gross" provisions of the WV/NPDES regulations Title 47, Series 30, Section 7.7.

D. Do you know or have reason to believe that any of the pollutants listed in Appendix E of the WV/NPDES regulations Title 47 Series 30, Section 4.5.2.f.4 are discharges or may discharge from any outlet? For every pollutant you list, briefly describe the reasons you believe it to be present and report any analytical data in your possession.

Pollutant	Source	Pollutant	Source

E. Was the analysis for all pollutants performed in accordance with 40 CFR Part 136? No Yes
 If "No" describe method used during analysis.

Pollutant	Description of Method

F. Have the toxic metals, cyanide and phenols required to be reported under table IV-C been analyzed with a precision to the nearest microgram per liter? Yes No If "No" give reasons.

G. If contract laboratory performed analysis complete table below:

Outlet Sampled	Time Sampled	Date Sampled	Date Analyzed	Name and Address of Laboratory

V. Potential Discharges not Covered by Analysis

Is any pollutant listed in Table IV-C a substance or a component of a substance which you now or expect that you will over the next five (5) years use or manufacture as an intermediate or final product or by-product?
 No Yes (If "Yes" attach list of all such pollutants)

VI. Biological Toxicity Testing Data

Have you performed or do you have any knowledge or reason to believe that any biological test for acute or chronic toxicity has been made on any of your discharges or on a receiving water in relation to your discharge within the last three (3) years? No Yes (If "Yes" submit copies of test results along with a description of the reason for test and the outfall or stream on which the test was performed).

VII. Discharges into non-complying waters

If you propose to discharge into a stream or water segment which either does not meet applicable water quality standards for the pollutant(s) discharges or is not expected to meet those standards even after treating the discharge to the required technology based limits, and the State has performed a pollutant waste allocation for these pollutants, then:

A. Submit documentation that:

1. There are sufficient remaining pollutant load allocations to allow for the discharge; and
2. The existing discharges into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards; or

B. Submit documentation that the applicant qualified for an alternate water quality based effluent limitation by making an adequate demonstration to the Director pursuant to the Environmental Quality Board's Administrative Regulations, Title 46, Series I, Section 8.

VIII. Variances

Is a variance from effluent limitations requested?

No Yes (If "Yes" Comply with WV/NPDES regulations, Title 47, Series 30, Section 4.5.6.)

TABLE IV-A

OUTLET NO.	Representing Outlets:
Date Sampled	Date Analyzed
Analysis performed by: Name _____	
Address _____	

POLLUTANT	EFFLUENT				NO. OF ANALYSES
	MAXIMUM DAILY VALUE		LONG-TERM AVERAGE VALUE		
	CONCENTRATION	MASS	CONCENTRATION	MASS	
Biochemical Oxygen Demand (BOD-5day)					
Chemical Oxygen Demand (COD)					
Total Organic Carbon (TOC)					
Fecal Coliform					
Total Residual Chlorine (if used)					
Ammonia (as N)					
Total Suspended Solids (TSS)					
Oil & Grease					
Flow (CFS)					
Temperature (Deg. C) Winter					
Temperature (Deg. C) Summer					
pH (Give Min. & Max. values)					

- TABLE A INSTRUCTIONS**
1. You must provide the results of at least one analysis for every pollutant in this table (except as noted in item 3 below) in accordance with WV/NPDES of the NPDES Regulations Title 47, Series 30, Section 4.5.2.f.1.
 2. Complete one table for each outfall. When an applicant has two 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. If a "Representative Outlet" is used the other outlets it represents must be shown in the space provided at the top of the table.
 3. If sewage or bath house waste is not part of the effluent, Biochemical Oxygen Demand, COD, TOC, Fecal Coliform and Ammonia is waived.
 4. If ammonia is used as a chemical reagent, then ammonia (as Nitrogen), temperature and field pH (at the time of sampling) must be included.
 5. If Chlorine is used (in sewage treatment, chemical treatment, etc.) it must be analyzed for, if not it may be waived.
 6. Include units used to report pollutant concentration and mass.

TABLE IV-B

OUTLET NO. _____	Representing Outlets _____
------------------	----------------------------

Date Sampled _____	Date Analyzed _____
--------------------	---------------------

Analysis performed by: Name _____	_____
Address _____	_____

POLLUTANT AND CAS NO. (if available)	EFFLUENT						
	MARK 'X' IF:		MAXIMUM DAILY VALUE		LONG TERM AVG. VALUE		NO. OF ANALYSES
	PRESENT	ABSENT	CONCENTRATION	MASS	CONCENTRATION	MASS	
Bromide (24959-67-9)							
Color							
Fluoride (1698-48-8)							
Nitrate-Nitrite (as N)							
Nitrogen, Total Organic (as N)							
Phosphorus, Total (as P) (7723-14-0)							
Sulfate (as SO ₄) (14808-79-8)	X						
Sulfide (as S)							
Sulfite (as SO ₃) (14265-45-3)							
Surfactants							
Aluminum, Total (7429-90-5)	X						
Barium, Total (7440-39-3)							
Boron, Total (7440-42-8)							
Cobalt, Total (7440-48-4)							
Iron, Total (7439-89-6)	X						
Magnesium, Total (7439-95-4)							
Molybdenum, Total (7439-98-7)							
Manganese, Total (7439-96-5)	X						
Tin, Total (7440-31-5)							
Titanium, Total (7440-32-6)							
Chloride	X						
RADIOACTIVITY							
Alpha, Total							
Beta, Total							
Radium, Total							
Radium 226, Total							

- TABLE B INSTRUCTIONS**
1. For each pollutant listed you must mark an "X" in the "Present" column if you know or have reason to believe it is present in your effluent or "Absent" column if believed absent.
 2. You must provide the results of at least one analysis for every pollutant listed that you believe to be present in your effluent in accordance with the WV/NPDES Regulations Title 47, Series 30, Section 4.5.2.f.3.B. At a minimum analyses must be submitted for Sulfate, Aluminum, Iron, Manganese, and Chloride.
 3. Complete one table for each outfall. When an applicant has two 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. If a "Representative Outlet" is used the other outlets it represents must be shown in the space provided at the top of the table.
 4. Include units used to report pollutant concentration and mass.

TABLE IV-C

OUTLET NO. _____

Representing Outlets: _____

Date Sampled _____

Date Analyzed _____

Analysis performed by: Name _____
Address _____

POLLUTANT AND CAS NO. (if available)	EFFLUENT				NO. OF ANALYSES
	MAXIMUM DAILY VALUE		LONG-TERM AVERAGE VALUE		
	CONCENTRATION	MASS	CONCENTRATION	MASS	
Antimony, Total (7440-36-0)					
Arsenic, Total (7440-38-2)					
Beryllium, Total (7440-41-7)					
Cadmium, Total (7440-43-9)					
Chromium, Total (7440-47-3)					
Copper, Total (7550-50-8)					
Lead, Total (7439-97-6)					
Mercury, Total (7439-97-6)					
Nickel, Total (7440-02-0)					
Selenium, Total (7782-49-2)					
Silver, Total (7440-22-4)					
Thallium, Total (7440-28-0)					
Zinc, Total (7440-66-6)					
Cyanide, Total (57-12-5)					
Phenols, Total					

TABLE C INSTRUCTIONS

1. You must provide the results of at least one analysis for every pollutant in this table in accordance with the WV/NPDES Regulations Title 47, Series 30, Section 4.5.2.f.2 .
2. Complete one table for each outfall. When an applicant has two 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. If a "Representative Outlet" is used the other outlets it represents must be shown in the space provided at the top of the table.
3. All Toxic Metals, Cyanide, and Phenols must be analyzed to the nearest microgram per liter, if not complete required information in Mod. 2, IV-F.
4. Include units used to report pollutant concentration and mass.

**WATER POLLUTION CONTROL APPLICATION
Module 3 - Surface and Groundwater**

I. What is the name of the major drainage basin in which the facility is located (check one of the following).

- Potomac Kanawha Monongahela Ohio Guyandotte Tug Fork/Big Sandy

II. Provide Water Quality Analysis reports (on Table III-a-Waste Status Report of Streams) for all streams which will receive water from point source discharges. The analysis report must be either average value of data collected over a period so as to reflect seasonal variations in the flow of the stream or for low flow 7 Q 10) condition of the stream.

For each outlet, two sampling points shall be established in the stream, one upstream and the other downstream of the outlet. If two or more outlets are close to each other, then two stream sample points for the group of outlets may be established, one upstream and the other downstream of the group of outlets. THE SAMPLING POINT MUST BE MARKED ON THE DRAINAGE MAP required in WVDEP MR-4 application forms.

III. Provide details of location, ownership, description, etc. of the first private water supply and all the public water supplies which use water from the stream and are located within five (5) miles on the downstream of the discharge points.

If none, check box

IV. Submit analysis of any springs within five hundred (500) feet of the proposed operation for:

If none, check box

ID No. _____	ID No. _____	ID No. _____
pH _____	pH _____	pH _____
Acidity _____ mg/l as CaCO ₃	Acidity _____ mg/l as CaCO ₃	Acidity _____ mg/l as CaCO ₃
Alkalinity _____ mg/l as CaCO ₃	Alkalinity _____ mg/l as CaCO ₃	Alkalinity _____ mg/l as CaCO ₃
Mn _____ mg/l	Mn _____ mg/l	Mn _____ mg/l
Fe _____ mg/l	Fe _____ mg/l	Fe _____ mg/l

V. Describe the present use of water in the aquifers and the water table within one thousand (1000) feet of the perimeter of the operation.

TABLE III - A

WASTE STATUS REPORT OF STREAMS
(use a separate form for each outlet)

Name of the receiving stream _____, tributary of _____, tributary of _____

Total drainage area of the receiving stream above the point of discharge _____, square miles.

Parameters	Units Used	Value		Remarks
		Upstream of the Outlet	Downstream of the Outlet	
1. Flow - Minimum 7-day consecutive average once in 10 years (7 Q 10)	cfs			
2. Iron (Total)	mg/l			
3. Manganese (Total)	mg/l			
4. Aluminum (Total) (for trout water)	mg/l			
5. Chlorides (only if discharge is expected to have levels in excess of 200 MG/L)	mg/l			

V. Mine drainage:

A. What will be the estimates maximum daily flow rate from the existing or proposed mine during the next five years? Explain how this was determined. Indicate volumes on table below.

	<u>Existing</u>		<u>Estimated (in next 5 Yrs.)</u>	
	<u>Daily max. in gallons</u>		<u>Daily max. in gallons</u>	
1. Pumping	_____	GPD	_____	GPD
2. Gravity flow	_____	GPD	_____	GPD

B. Details of pumps:

	Capacity (GPM)	Actual Pumping Rate (GPM)	Hours of operation / day No. days / week	Automatic or Manual
1. Existing				
2. Proposed				

C. Drainage will be through (check appropriate categories):

- | | |
|--------------------------------|---|
| <input type="checkbox"/> Drift | <input type="checkbox"/> Borehole(s) |
| <input type="checkbox"/> Slope | <input type="checkbox"/> Abandoned Workings |
| <input type="checkbox"/> Shaft | <input type="checkbox"/> Other Active/Inactive Workings |

VI. Map

Include the following details on the Mine Development Map submitted with MR-4.

- A. Outline of all overlying and underlying mining operations (active, inactive and abandoned), elevation of water pool, if any, and discharge points.
- B. Location of underground sumps and their capacity, location of pumps and their capacity, general route of drainage to surface or to adjacent mines.
- C. Seam structural contours at 10 foot 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.
- D. Likely final position of water level.

VII. If there are abandoned or operating mines in the same coal seam within one (1) mile of the mine perimeter, include:

- A. Quantity of flow from each mine

B. Analysis of flow from the mine for:

pH	_____	Manganese	_____	mg/l
Acidity	_____	Iron	_____	mg/l
Alkalinity	_____	Aluminum	_____	mg/l
			(if trout stream)	

WATER POLLUTION CONTROL APPLICATION
Module 6 - Preparation Plant/Prep Plant Associated Areas
(including refuse disposal areas, loadout areas and tipples)

I. Location of the facility (give latitude and longitude): _____° _____' _____", _____° _____' _____"

II. Type of facility (check appropriate category):

- Prep Plant Prep Plant Associated Area Refuse Disposal Area Loading Facility
 Modular/Portable Prep Plant Old Gob Pile Recycling Facility Tipple
 Other (Specify) _____

III. Name of the seam(s) from which coal will be prepared: _____

IV. Sulfur in coal prepared or handled:

Sulfur type

Name of the coal seam to be prepared			
A. Pyrite (% range)			
B. Organic & Sulfate (% range)			
Total			

V. Refuse characteristics:

Sulfur Content

Name of the coal seam to be prepared			
A. Pyrite (% range)			
B. Organic & Sulfate (% range)			
Total			

C. Submit results of acid-base account test for the refuse.

VI. Processing

A. Type of wet concentration equipment: _____

B. Sizes wet concentrated: _____

C. Capacity of concentration equipment for each size of coal (tons/hour). _____

VII. Discharge quantity and characteristics:

A. Is the system: "Closed Circuit" or "Open Circuit"

B. Plant Effluent: Rate of effluent that will be discharged from the facility for treatment _____ GPM

C. Number of hours the plant will operate per day: _____

D. Will emergency ponds be used to drain the thickener, and the slurry in circulation in the plant? No Yes
If "Yes" give the volume of slurry likely to be drained from the plant, thickener volume and emergency pond volume.

E. Dust Collection by Water:

1. Is dust recovery by water practiced or proposed? No Yes If yes, list type of equipment proposed or used.

2. How is water disposed of? _____

If discharged to the stream, give its quality for:

pH _____		Fe _____	mg/l
Suspended Solids _____	mg/l	Mn _____	mg/l
Acidity _____	mg/l as CaCO ₃	Mn _____	mg/l
Alkalinity _____	mg/l as CaCO ₃	(if trout stream)	

F. Is thermal drying practiced or proposed? No Yes If "yes" Describe briefly _____

G. Give the name and quantity of chemicals, oils or other material added in the circuit which will form part of the effluent and their concentration in the effluent discharged? _____

H. Water Supply:

1. Source of water supply to the facility: _____
2. Average quantity of water used (gallons/day and GPM) _____

VIII. Maps (designate as Exhibit C)

A. Include a plot plan of the facility showing the following (this can be included on the proposal/drainage map submitted with the WVDEP MR-4 application if indicated clearly):

1. Location of the different units of the facility such as crusher house, cleaning units, coal piles (raw and clean), thickeners, pressure/vacuum filters, haulroad, etc.
2. Location of all treatment ponds, dams, ditches, culverts, treatment plant, etc.

B. Provide A flow diagram of the facility.

IX. Will there be underground workings below the area of refuse disposal? No Yes

If yes, give details of effect of mining on the refuse pile and depth of the seams mined below the disposal area.

C. Give geological details for this mine such as strike and dip of the seam, height of seam, location of faults, groundwater horizon, etc.

D. Is there subsidence and fracture in the strata above the seam? _____

E. Is there water in the mine? No Yes If yes, what area is already flooded? Submit a water quality report for:

pH	_____	total acidity	_____
total iron	_____	total alkalinity	_____
total manganese	_____		

F. What volume of the mine is available for disposal of waste? _____

G. What quantity of waste will be disposed of and at what rate? _____

H. What is the estimated length of time of disposal of waste into the mine? _____

I. Give the quality of waste introduced into the mine (pH, acidity, alkalinity, total iron, total manganese, sulfates, all chemical reagents, % of solids by volume and weight).

J. Is this mine discharging into the waters of the state? No Yes. Give points of discharge on Exhibit E (see R. below), coordinates, rate of discharge and quality for:

Pt. Reference (from Ex. E)	_____	Pt Reference (from Ex. E)	_____
Longitude:	_____ ° _____ ' _____ "	Longitude:	_____ ° _____ ' _____ "
Latitude:	_____ ° _____ ' _____ "	Latitude:	_____ ° _____ ' _____ "
Flow Rate (GPM)	_____	Flow Rate (GPM)	_____
pH	_____	pH	_____
Acidity, mg/l as CaCO ₃	_____	Acidity, mg/l as CaCO ₃	_____
Alkalinity, mg/l as CaCO ₃	_____	Alkalinity, mg/l as CaCO ₃	_____
Fe, mg/l	_____	Fe, mg/l	_____
Mn, mg/l	_____	Mn, mg/l	_____
Suspended Solids, mg/l	_____	Suspended Solids, mg/l	_____

K. What measured will be taken to prevent pollution of the waters of the state?

L. Are there wells in the area of the mine which is to be used for disposal of sludge or mine water?

No Yes. Give location of wells, top elevation, water level elevation and water quality.

M. Is the water of this mine used for domestic supply? No Yes If "Yes" give details.

N. Are there mine workings above or below or adjacent to this mine which may be affected by its flooding? No Yes
If "Yes" give details. _____

O. What will be the affect of the disposal of waste water, mine water, sludge, coal slurry, etc., into the mine on the ground water quality in the mine area or neighboring areas? Give details. _____

P. Has the plan for disposal of waste water, mine water, sludge or slurry into this mine been approved by the Department of Mines or the Division of Environmental Protection? Provide a copy of the approval.

Q. Does the plan of disposal have the approval of the underground mine owner? No Yes

R. Maps (designate as Exhibit D): A mine map showing the outline of the workings of the mine where mine water/sludge is to be disposed of, area(s) already flooded, seam structural contours, surface contours at twenty (20) foot intervals, area of containment of mine water/sludge, points of entry of sludge/mine water, points of discharge, strike and dip. Also show the location of wells, boreholes, etc.

VII. Operation, Maintenance and Monitoring of Disposal System

A. Specify plan of operation, maintenance and monitoring of the disposal system.

B. Is there a contingency plan for immediate implementation on the stoppage of a disposal system due to power failure, breakdown, etc. Give details. _____

C. How will the quality of discharges at outlets be monitored?

Outlet #	Monitoring Method

D. What steps will be taken to stop pollution if it is detected? _____

WATER POLLUTION CONTROL APPLICATION Module 8 - Abandonment of Deep Mine

NOTE: THIS MODULE IS TO BE USED AS BOTH A PLAN OF ABANDONMENT (Section I) AND APPLICATION FOR ABANDONMENT (Section II). THE APPLICATION FOR ABANDONMENT MUST BE SUBMITTED 180 DAYS PRIOR TO SEALING.

I. Plan of Abandonment:

A. What percentage of mine area will be flooded on abandonment after stabilization of groundwater conditions? _____
Give justification and calculations. _____

B. If there are mine workings either below or above the mine workings to be abandoned, indicate whether they are active, inactive or abandoned, the final limits of mining (to be shown in different colors on the mine map in Section II-4 or Mine Development Map in WVDEP MR-4), 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 quantity and quality of the water. Parameters analyzed are: pH, acidity, alkalinity, iron and manganese.

C. Indicate 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.

D. Provisions that shall be made for assuring acceptable water quality from any discharges after abandonment of 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.

E. Analysis. For an existing mine, submit analysis of water discharges from the mine for total iron, total manganese, pH, acidity, and alkalinity before treatment.

II. Application for Permit to Abandon

An application for a permit to abandon shall contain the information requested above (Section I) updated to show final determinations on each item which reflects current knowledge, provided that where the information submitted (Section I) has not significantly changed, further updating will not be required, and the following:

- A. Indicate what head of water is expected on the lowest point of mining after abandonment.
- B. Specify the width of the barriers proposed along the outcrop, adjacent mines, auger holes, and strip mines. Give justification and calculations.
- C. Indicate the type and number of permanent seals proposed, their design details and drawings and the material to be used for construction.

D. A mine map to scale showing among other things (designate as Exhibit F):

1. the mine boundary final limits of mining (to be shown in different colors); thickness of barriers against outcrop, any adjacent deep and strip mines and auger holes;
2. predicted final water elevation in the proposed mine;
3. water level and its elevation in any adjacent mines;
4. seam structural 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;
5. proposed location of all mine seals and sectionalized dams, if any;
6. all proposed mine portals, boreholes;
7. elevations at the top and at the mineral bed of portals and boreholes;
8. the north line;
9. general strike and dip direction of the mineral bed and the average dip.

E. A statement from the applicant which predicts the likelihood of a discharge from the abandoned mine.

F. 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 name and thickness of each strata above and the immediate strata below the coal seam, the position of the water table and the direction of the flow of water, the final likely level of water in the coal seam 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 Development Map submitted under Module 4.

G. A report on the quality of water being discharged from the mine during the past two years, and a prediction of expected discharge quality should a discharge occur.

WATER POLLUTION CONTROL APPLICATION Module 9 - Disposal of Sewage Material from New Sewage Facility

I. Name of Facility _____

II. Facility Contact _____
A. Name and Title (last, first and title) B. Phone (area code/number)

III. Facility Mailing Address _____
A. Street or Post Office Box
B. City, Town or nearest Post Office B. County C. Zip Code

IV. Facility Location _____
A. Street, Route No. or other specific identifier
B. City, Town or nearest Post Office B. County C. Zip Code

V. Operator and Ownership Information _____
A. Name B. Phone (area code/number)
C. Is the name listed in Item V-A also the owner? Yes (Go to Item V-E) No
D. Name and Address of Owner _____
E. Status of Operator Federal State Private Public
 Other(Specify) _____

VI. Applicant Request
A. In accordance with Chapter 16, Article 1, Section 9, a certificate to construct a sewage disposal system or part thereof and:
B. In accordance with Chapter 22, Article 11, Section 8, a State NPDES Permit to acquire, construct, install and operate sewage, industrial waste, or other waste into the waters of the State.

VII. Existing Permits and Applications

Issuing Agency and Address	Type of Permits or Application	Permit or Application No.	Effective Date yr/mo/day	Expiration Date yr/mo/day

XI. Description of Sewage Disposal System

A. Collection System

- 1. Size of Sewer lines _____
- 2. Type of Sewer lines _____
- 3. Length of Sewer lines of each size _____
- 4. Minimum ground cover on sewer lines _____
- 5. Type of Sewer Joints _____
- 6. Number of Manholes _____
- 7. Number of Cleanouts _____
- 8. Number of Lift Stations _____
- 9. Size of Force Mains _____
- 10. Length of Force Mains _____

B. Treatment Plant

- 1. Type of treatment
 - a. Extended Aeration
 - b. Stabilization Pond
 - c. Other (specify) _____
- 2. Design Flow (gallons per day, GPD) _____
- 3. Type of Pretreatment _____
- 4. Aeration Chamber Size _____
- 5. Blower Size _____
- 6. Clarified Size and Surface Area _____
- 7. Polishing Pond Dimensions
 - Length ; Width ; Depth (at water surface) _____
 - Length ; Width (at bottom) _____
- 8. a. Type of Disinfection _____
- b. Chlorine Contact Chamber Size (if applicable) _____
- 9. Stabilization Pond Dimensions
 - Length x Width x Depth (at water surface) _____
 - Length x Width (at bottom) _____
- 10. Post Aeration Unit Size _____
- _____
- _____
- 11. Other Units and Size _____
- _____
- _____
- _____

XII. Description of Operation and Maintenance

- A. Certified Operator Classification _____
- B. Frequency of Inspection by Operator _____
- C. List various sewage treatment plant operating and wastewater testing equipment.
 - _____
 - _____
 - _____
- D. Method of excess sludge disposal _____
- _____
- _____
- _____

XIV. A. U. S. Geological Survey Topographic Map showing property lines, point of discharge and downstream water intake or impoundment, if any.

B. Site plan of the facility showing:

- 1. Layout with dimensions and property lines
- 2. Home sites, mobile home sites, camping trailer sites, schools or other buildings
- 3. Location of and distances to known water intakes or wells
- 4. Location of existing or proposed water lines
- 5. Sewage treatment unit(s)
- 6. Layout and size of sewer lines, manholes, and/or cleanouts and location of lift stations
- 7. Distance(s) of sewage treatment plant, stabilization pond and polishing pond from surrounding residences or other buildings
- 8. Point of discharge of effluent in stream. List mile point.
- 9. Effluent routing details including sample point and protection from erosion at discharge.
- 10. Fence, wall or building around sewage treatment facilities
- 11. Access road to treatment facilities
- 12. Landscaping for the prevention of surface water entering plant, and prevention of erosion from site.

C. Profile of sewer lines showing:

- 1. Existing and finished ground level
- 2. Manhole locations with invert and top elevations
- 3. Grade of proposed sewer lines
- 4. Size, length and type of proposed sewer lines
- 5. Any other items in collection system including lift stations, siphons, force mains with air relief valves, grease traps, sand traps, etc. with proper detailing and elevations

6. Waterline crossings

D. 1. General description of project and location

- 2. Number of units served and possible expansion of facility
- 3. Type of pipe and joints
- 4. Specifications of lift stations, if any
- 5. Specifications for sewage treatment plant
- 6. Hydraulic calculations
- 7. Soil characteristics of site for a stabilization pond or polishing pond. Report from U. S. Department of Agriculture Soil Conservation Service required
- 8. Manhole details
- 9. Filter details, if any, including type of origin of filter material or sand uniformity coefficient, effective size and percent passing a number 20 sieve
- 10. Sewer rise details (mobile home park)
- 11. Discharge Load Allocation (from OWR-MUN 1-81)
- 12. Test Equipment
- 13. Aerated sludge holding tank (if required)
- 14. 10- 25- and 10° year flood elevations
- 15. Post aeration
- 16. Size of sewage treatment, list station, stabilization pond
- 17. Non-potable water for cleaning (if applicable)
- 18. Provision for outlet number
- 19. Surge equalization tank (if required)
- 20. Method of flow measurement (weir, flow meter, etc.)
- 21. Cathodic protection (if any steel units)
- 22. Provision for level installation of plant (pad or base)
- 23. Provision for protection from freezing (other than buried plant)

WATER POLLUTION CONTROL APPLICATION Module 10 - Disposal of Sewage from Existing Sewage Facility

Permit No. _____

- I. Name of Facility _____
- II. Facility Contact:
 - A. Name and title (last, first and title) _____
 - B. Phone (area code and number) _____
- III. Facility Mailing Address:
 - A. Street or Post Office Box _____
 - B. City, State and Zip Code _____
- IV. Facility Location:
 - A. Street, Route No. or other specific identifier _____
 - B. City, Town or nearest Post Office _____
 - C. County _____ Zip Code _____
- V. Operator Information:
 - A. Name of Operator _____
Phone (area code and number) _____
 - B. Is the name listed in Item V-A also the owner? No Yes.

- VI. Applicant Request
 - To operate a sewage disposal system or part thereof for the direct or indirect discharge of sewage, industrial waste, or other waste into the waters of this state. (Complete Section VII to XIII)
 - Reissue existing state NPDES Permit. (Complete Sections VII to XIII and XV)
 - Modify existing state NPDES Permit. (Complete Sections VII to VIII and XVI)
 NPDES Permit No. _____

VII. Permits, Licenses and Applications

Issuing Agency and Address	Type of Permit or License	Permit Number	Effective Date (yr/mo/dy)	Expiration Date (yr/mo/dy)

- VIII. Description of Discharge
 - A. Discharge Outlet No. (assign a three-digit number beginning with 100) _____
 - B. Discharge Point Name _____
 - C. Discharge Point (Deg.Min.Sec.) _____ Lat. _____° _____', _____", Long _____° _____', _____"
 - D. Name of Receiving Stream _____
Tributary of _____
 - E. River Mile Point _____

- IX. Facility Description
 - A. Service: Mine Bath House Other (specify) _____
 - B. Number of Persons _____
 - C. Number of Bath House Sites _____
 - D. Can Development be Expanded No Yes. If yes, to what number _____
 - E. Total Area of Site in Acres _____

X. Description of Sewage Disposal System

A. Collection System

- 1. Size of Sewer Lines _____
- 2. Type of Sewer Lines _____
- 3. Length of Sewer Lines of Each Size _____
- 4. Minimum Ground Cover on Sewer Lines _____
- 5. Type of Sewer Joints _____
- 6. Number of Manholes _____
- 7. Number of Cleanouts _____
- 8. Number of Lift Stations _____
- 9. Size of Force Mains _____
- 10. Length of Force Mains _____

B. Treatment Plan

- 1. Type of Treatment: Extended Aeration , Stabilization Pond
 Other (specify) _____
- 2. Type of Pretreatment _____
- 3. Aeration Chamber Size _____
- 4. Blower Size _____
- 5. Clarifier Size _____
- 6. Polishing and Dimensions _____
- 7. Chlorination Chamber Size _____
- 8. Stabilization Pond Dimensions _____
- 9. Post Aeration Unit Size _____
- 10. Various Other Units and Size of Units _____

XI. Description of Operation and Maintenance

A. Certified Operator? No Yes Classification _____

B. Frequency of Inspection by Operator _____

C. Description of Operator's Duties and Method of Operation _____

D. List Various Operating Equipment _____

E. Description of Sludge Disposal _____

XII. Additional Information

Item Number	Information

XIII Required Information to Accompany Application

A. U.S. Geological Survey Topographic Map showing property lines, point of discharge and downstream water intake or impoundment, if any.

B. Site plan of the facility showing:

- 1. Layout with dimensions and property lines.
- 2. Bath House sites or other buildings.
- 3. Location of and distances to known water intakes or wells.
- 4. Location of existing or proposed water lines.
- 5. Sewage treatment unit(s).
- 6. Layout and size of sewer lines, manholes, and/or cleanouts and location of lift stations.
- 7. Distance(s) of sewage treatment plant, stabilization pond, and polishing pond from surrounding residences or other buildings.
- 8. Point of discharge of effluent in stream. List mile point.
- 9. Effluent routing details.
- 10. Fence around sewage treatment facilities.

C. Profile of sewer line showing:

- 1. Existing and finishing ground level.
- 2. Invert elevations and manhole locations.
- 3. Grade of proposed sewer lines.
- 4. Size and length of proposed sewer lines.

D. Report any specifications setting forth:

- 1. General description of project and location.
- 2. Number of units served and possible expansion of facility.
- 3. Type of pipe and joints.
- 4. Specifications for sewage treatment plant.
- 5. Specifications for lift stations, if any.
- 6. Hydraulic calculations.
- 7. Soil characteristics of site for a stabilization pond or polishing pond. Report from U. S. Department of Agriculture Soil Conservation Service required.
- 8. Manhole details.
- 9. Filter details, if any.
- 10. Sewer riser details (mobile home park).
- 11. Discharge Load Allocation (Module 9 - page 7).
- 12. Test Equipment.
- 13. Aerated sludge holding tank (if required).
- 14. 10, 25 and 100 year flood elevations.
- 15. Post aeration.
- 16. Size of sewage treatment plant, lift station, stabilization pond.

XIV. Reissuance of Existing Permit

Since issuance of your existing permit have you added any outlets, modified or added to your treatment or disposal system in any way, increased the volume or concentration of your waste(s) or waste stream(s), or extended, modified or added to your facility any operation which would cause an increase in the volume or concentration of waste(s) discharges?

No Yes Give description of the changes and indicate the proposed increase(s) in volume and concentration and/or additional parameters.

XV. Modification of Existing Permit

The applicant must present a detailed description with supporting drawings, water analyses, etc. as to exactly what modification is being applied for. A schedule of compliance (completion of final plans, commencement and completion of construction, operational level date, etc.), beginning at the time of permit modification issuance must also be provided where applicable.

Municipal/Package Sewage Treatment Discharge Load Allocation

Date _____

Part A - To be completed by applicant

Have any prior applications been made for this facility? No Yes. If yes, give dates of prior applications

I. Owner of the Wastewater system _____
 Address _____
 Form Submitted by _____ Phone # _____
 Mailing Address _____

II. Treatment Facilities location _____
 III. Discharge point location (the discharge point refers to the exact location of the pipe outlet from the treatment facility):
 A. Name of the county where discharge point is located: _____
 B. Name of U.S.G.S. 7.5 minute topographic map: _____

TOPO MAP OR COPY OF THE TOPO MAP SHOWING THE FACILITY LOCATION, EFFLUENT PIPELINE, AND DISCHARGE POINT MUST BE ATTACHED (See item 3, instructions)

C. Immediate receiving stream is _____ which is a tributary of _____ (see item 4, instructions)
 D. Does the immediate stream have a continuous year round flow? No Yes
 E. The discharge point on the immediate stream is _____ miles (to the nearest tenth) from the mouth of the immediate stream.
 F. Within five miles downstream from the discharge point, does the receiving stream have: a domestic water supply intake?
 No Yes; an impoundment? No Yes
 G. Latitude and Longitude of discharge point to the nearest second.
 Latitude: _____ " Longitude: _____ "
 H. If area of watershed above the discharge point to the immediate stream is less than 200 square miles, give measured drainage area from the U.S.G.S. Topo map: _____ square miles (see item 5, instructions).

IV. Facility Description
 A. Purpose of facility (mobile home park, motel, bathhouse, etc.) _____
 B. Will this treatment plant handle sewage from towns/entities other than the owner listed above?
 No Yes. If yes, list all other towns/entities _____
 C. Will this facility be used for industrial waste? No Yes. If yes, give % flow from industrial users _____
 D. Design criteria (see item 6, instructions):

	<u>existing</u>	<u>design</u>
No. of persons	_____	_____
Flow per person	_____ gal/day/person	_____ gal/day/person
Total wastewater flow	_____ gal/day	_____ gal/day

V. A. Distance to the nearest public sewer _____
 B. Street or other location of nearest public sewer _____
 C. Give reason why the public sewer is not being used: (see item V, conditions) _____

THE INFORMATION USED FOR THIS MODULE CANNOT BE REFERENCED TO OTHER PORTIONS OF THIS APPLICATION

Part B - To be completed by the Division of Environmental Protection, Office of Water Resources

Date: _____ Design Pop: _____ Design Flow: _____ Segment _____ Trout: Yes _____ No _____ 7/Q/10 _____ cfs mgd graph: _____ sta: _____ Ratio _____	Allowable Waste Load (30-day average)			
		Parameter	conc(mg/l)	lbs/day
		UBOD		
		BOD5		
		TKN		
		SS		
		DO		Bacteria Disinfection reqd.

INSTRUCTIONS

1. If more space is needed to answer fully any questions on this application, use separate sheet. Identify each answer with the number of corresponding question.
2. As a rule, the treatment requirements are dependent on the flow and other characteristics of the immediate receiving stream. In certain cases it may be cost-effective to pipe the effluent to another stream with less stringent requirements.
3. The U.S.G.S. Topographic maps are available at most bookstores within the state, or they may be obtained by writing to: Eastern Region-Map Distribution, United States Geological Survey, 1200 South Eads Street, Arlington, Virginia 22202.
4. If the immediate receiving stream is an unnamed tributary, indicate it as such. If no stream is available, explain where the effluent will be disposed.
5. The drainage area of the watershed above the discharge point is extremely important and should be measured as precisely as possible. Incorrect values of drainage area will lead to an erroneous allocation and possible permit revocation at a later date.
6. The design criteria to calculate the flow/person/day can be obtained from pamphlet EG-6, "Permit Procedure and Design Requirements for Small Sewage and Water Systems", Division of Sanitary Engineering, West Virginia Department of Health, Charleston, West Virginia. If the design criteria used is different from the one specified by the Department of Health, attached an explanation for the difference.

CONDITIONS

In establishing the above allocations, the engineer and/or applicant is cautioned that:

- I. The allocation is based on current conditions and should be reaffirmed after a lapse of six (6) months.
- II. The allocation does not relieve discharger(s) from meeting the Water Quality Standards established for the receiving waters.
- III. Advance approval is not intended for treatment facilities as a result of this allocation.
- IV. Application for appropriate permits is required and compliance with all applicable State Laws, rules and regulations pertaining to wastewater collection and treatment facilities is mandatory.
- V. Should the review of the application for a package plant discharge indicate that the area may be serviceable by a proposed municipal or PSD system, the above allocation may be considered temporary and valid only until the connection to the public facility is feasible.

WATER POLLUTION CONTROL APPLICATION
Module 12 - Reissuance

I. List all the modifications done or requested to the facility since the state NPDES permit was last issued or modified.

II. Elaborate the modifications sought / made under each category or major modification (see WV/NPDES Regulations, Title 47, Series 30, Section 8.2.3). List and explain the major alterations together with supportive maps and drawings. If new discharge point is added give latitude and longitude, receiving stream, water quality, treatment systems, etc.

III. Update the abandonment plan and mine map.



FILED

DEC 20 3 40 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

West Virginia Legislature
Legislative Rule-Making Review Committee

Room MB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Hickerson, Adm. Assistant

December 19, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: -- Mr. William Brannon
Division of Environmental Protection
Office of Water Resources
1201 Greenbrier St.
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: WV/NPDES Regulations for Coal Mining Facilities

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

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

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

Senate Bill No. 172

1 (By Senator(s) Ross, Anderson, Macnaughtan,
2 Boley and Buckalew)

3 [Introduced March 3, 1997; referred to the
4 Committee on Energy, Industry and Mining; and
5 then to the Committee on the Judiciary.]
6
7
8
9

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to WV/NPDES regulations for coal mining facilities.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
22 PROMULGATE LEGISLATIVE RULES.

23 §64-3-1. Division of environmental protection.

1 (a) The legislative ~~rules~~ rule filed in the state
2 register on twenty-eighth day of July, one thousand nine
3 hundred ninety-five, authorized under the authority of
4 section four, article five, chapter twenty-two of this
5 code, relating to the division of environmental protection
6 (emission standards for hazardous air pollutants pursuant
7 to 40 CFR Part 63, 45 CSR 34), ~~are~~ is authorized.

8 (b) The legislative ~~rules~~ rule filed in the state
9 register on the twenty-eighth day of July, one thousand
10 nine hundred ninety-five, authorized under the authority of
11 section four, article five, chapter twenty-two of this
12 code, modified by the division of environmental protection
13 to meet the objections of the legislative rule-making
14 review committee and refiled in the state register on the
15 twenty-seventh day of October, one thousand nine hundred
16 ninety-five, relating to the division of environmental
17 protection (to prevent and control air pollution from
18 hazardous waste treatment, storage or disposal facilities,
19 45 CSR 25), ~~are~~ is authorized.

20 (c) The legislative ~~rules~~ rule filed in the state
21 register on the twenty-eighth day of July, one thousand
22 nine hundred ninety-five, authorized under the authority of
23 section four, article five, chapter twenty-two of this

1 code, relating to the division of environmental protection
2 (acid rain provisions and permits, 45 CSR 33), ~~are~~ is
3 authorized.

4 (d) The legislative ~~rules~~ rule filed in the state
5 register on the thirty-first day of July, one thousand nine
6 hundred ninety-five, authorized under the authority of
7 section six, article seventeen, chapter twenty-two of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 eighteenth day of January, one thousand nine hundred
12 ninety-six, relating to the division of environmental
13 protection (underground storage tanks, 47 CSR 36), ~~are~~ is
14 authorized.

15 (e) The legislative ~~rules~~ rule filed in the state
16 register on the thirty-first day of July, one thousand nine
17 hundred ninety-five, authorized under the authority of
18 section six, article eighteen, chapter twenty-two of this
19 code, modified by the division of environmental protection
20 to meet the objections of the legislative rule-making
21 review committee and refiled in the state register on the
22 eighteenth day of January, one thousand nine hundred
23 ninety-six, relating to the division of environmental

1 protection (hazardous waste management regulations, 47 CSR
2 35), ~~are~~ is authorized.

3 (f) The legislative ~~rules~~ rule filed in the state
4 register on the thirty-first day of July, one thousand nine
5 hundred ninety-five, authorized under the authority of
6 section four, article three, chapter twenty-two of this
7 code, modified by the division of environmental protection
8 to meet the objections of the legislative rule-making
9 review committee and refiled in the state register on the
10 twenty-third day of January, one thousand nine hundred
11 ninety-six, relating to the division of environmental
12 protection (surface mining and reclamation regulations, 38
13 CSR 2), ~~are~~ is authorized with the following amendments:

14 "On page 64, section 3.27, after the word 'Director'
15 by striking out the word 'may' and inserting in lieu
16 thereof the word 'shall';

17 On page 64, section 3.27, after the word 'completed'
18 by striking out the remainder of the first paragraph and
19 inserting in lieu thereof the following words:

20 'and reclamation activities are ongoing.'

21 On page 156, section 11.6(c)(6)(A) after the word
22 'operations' by striking out the words 'within five (5)
23 years of the date of SMA approval,';

1 On page 156, section 11.6(c)(6)(B) after the word
2 '(95-87)' by striking out the words 'within five (5) years
3 of the date of SMA approval,';

4 On page 157, section 11.6(c)(6)(C) after the word
5 'State' by striking out the words 'within five (5) years of
6 the date of SMA approval,';

7 On page 163, section 11.6(d)(6)(A), after the word
8 'applicant' by striking out the words 'within five (5)
9 years of the date of SMA approval,';

10 On page 164, section 11.6(d)(6)(B), after the word
11 '95-87' by striking out the words 'within five (5) years of
12 the date of SMA approval,';

13 On page 164, section 11.6(d)(6)(C), after the word
14 'wetlands' by striking out the words 'within five (5) years
15 of the date of SMA approval,';

16 On page 169, section 11.6(e)(5)(A), after the word
17 '95-87' by striking out the words 'within five (5) years of
18 the date of SMA approval,';

19 On page 169, section 11.6(e)(5)(B), after the word
20 'wetlands' by striking out the words 'within five (5) years
21 of the date of SMA approval,';

22 On page 175, section 11.6(f)(5)(A), after the word
23 '95-87', by striking out the words 'within five (5) years

1 of the date of SMA approval, ';

2 On page 175, section 11.6(f)(5)(B), after the word
3 'enhancement' by striking out the words 'of wetlands within
4 five (5) years of the date of SMA approval,'.

5 On page 178, section 12.2 subsection (e) by striking
6 12.2.e in its entirety and inserting in lieu thereof the
7 following:

8 'Notwithstanding any other provisions of this rule, no
9 bond release or reduction will be granted if, at the time,
10 water discharged from or affected by the operation requires
11 chemical treatment in order to comply with applicable
12 effluent limitations or water quality standards: *Provided,*
13 That the Director may approve a request for Phase I but not
14 Phase II or III, release if the applicant demonstrates to
15 the satisfaction of the Director that either:

16 (A) The remaining bond is adequate to assure long term
17 treatment of the drainage; or

18 (B) The operator has irrevocably committed other
19 financial resources which are adequate to assure long term
20 treatment of the drainage: *Provided,* That the alternate
21 financial resources must be in acceptable form, and meet
22 the standards set forth in Section 11 of the Act and
23 Section 11 of this rule: *Provided, however,* That the

1 alternate financial arrangements shall provide a mechanism
2 whereby the Director can assume management of the resources
3 and treatment work in the event that the operator defaults
4 for any reason: And provided further, That default on a
5 treatment obligation under this paragraph shall be
6 considered equivalent to a bond forfeiture, and the
7 operator will be subject to penalties and sanctions,
8 including permit blocking, as if a bond forfeiture had
9 occurred.

10 In order to make such demonstration as referenced
11 above, the applicant shall address, at a minimum, the
12 current and projected quantity and quality of drainage to
13 be treated, the anticipated duration of treatment, the
14 estimated capital and operating cost of the treatment
15 facility, and the calculations which demonstrate the
16 adequacy of the remaining bond or of the alternate
17 financial resources.'

18 On page sixteen, section 38-2-2.106, after the words
19 'sum of the loading' by inserting the words 'or driving';
20 and by striking out the words 'in a constructed valley
21 fill, backfill, dam, or refuse pile' and inserting in lieu
22 thereof the words 'as determined by acceptable engineering
23 practices';

1 On page twenty-eight, section 38-2-3.2(e), after the
2 words 'limited number of minor changes' by inserting the
3 words 'that do not significantly affect the health, safety
4 or welfare of the public and';

5 On page thirty-six, section 38-2-3.6(h)(5), after the
6 words 'as defined in' by striking out the words 'Article 5D
7 of Chapter 20' and inserting in lieu thereof the words
8 'Article 14 of Chapter 22';

9 On page thirty-nine, section 38-2-3.8(c), at the end
10 after the words 'reasonable time for compliance.', by
11 inserting a new sentence to read as follows: 'Provided,
12 That those structures and facilities, where it can be
13 demonstrated that reconstruction or revision would result
14 in greater environmental harm and the performance standards
15 set forth in the Act and these regulations can otherwise be
16 met, may be exempt from revision or reconstruction.';

17 On page one hundred seventy-eight, section 38-2-
18 12.2(d), after the words 'until all coal extraction
19 operations' by inserting the words 'for the permit or
20 increment thereof', and after the words 'the entire
21 disturbed area' by inserting the words 'for the permit or
22 increment thereof';

23 On page one hundred ninety-seven, section 38-2-

1 14.3(c)(2), after the words 'medium is the best' by
2 inserting the word 'reasonably';

3 And,

4 On page two hundred fifteen, section 38-2-14.14(e)(4),
5 by striking the sentence 'Runoff from areas above and
6 adjacent to the fill shall not be allowed to flow onto the
7 fill surface, and shall be diverted into stabilized
8 diversion channels, designed and constructed to safely pass
9 the peak runoff from a 100 year, 24 hour precipitation
10 event.' and inserting in lieu thereof the sentences
11 'Surface water runoff from areas above and adjacent to the
12 fill shall be diverted into properly designed and
13 constructed stabilized diversion channels which have been
14 designed using best current technology to safely pass the
15 peak runoff from a 100 year, 24 hour precipitation event.
16 The channel shall be designed and constructed to ensure
17 stability of the fill, control erosion, and minimize water
18 infiltration into the fill.'"

19 (g) The legislative ~~rules~~ rule filed in the state
20 register on the twenty-sixth day of July, one thousand nine
21 hundred ninety-five, authorized under the authority of
22 section four, article twenty-one, chapter twenty-two of
23 this code, modified by the division of environmental

1 protection to meet the objections of the legislative
2 rule-making review committee and refiled in the state
3 register on the fourteenth day of December, one thousand
4 nine hundred ninety-five, relating to the division of
5 environmental protection (coalbed methane wells, 38 CSR
6 23), ~~are~~ is authorized.

7 (h) The legislative ~~rules~~ rule filed in the state
8 register on the twenty-third day of November, one thousand
9 nine hundred ninety-four, authorized under the authority of
10 section eight, article eleven, chapter twenty of this code,
11 modified by the division of environmental protection to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the
14 twentieth day of December, one thousand nine hundred
15 ninety-five, relating to the division of environmental
16 protection (waste tire management, 47 CSR 38G), ~~are~~ is
17 authorized.

18 (i) The legislative ~~rules~~ rule filed in the state
19 register on the twenty-second day of June, one thousand
20 nine hundred ninety-five, authorized under the authority of
21 section twenty, article fifteen, chapter twenty-two of this
22 code, modified by the division of environmental protection
23 to meet the objections of the legislative rule-making

1 review committee and refiled in the state register on the
2 twenty-second day of December, one thousand nine hundred
3 ninety-five, relating to the division of environmental
4 protection (sewage sludge management, 47 CSR 38D), ~~are~~ is
5 authorized with the amendments set forth below:

6 On page seven, section 3.2.2, by striking out the
7 words "Table 3 of this rule will automatically be repealed
8 and replaced with Table 3A of this rule on December 31,
9 1997, unless this provision is modified prior to that
10 date.";

11 And,

12 On page seven, section 3.2.2, after the word "rule."
13 by inserting the following: The director is authorized
14 until Dec. 31, 1999, to issue variances to this section to
15 allow land application to soils which exceed the maximum
16 soil concentrations of metals listed in Table 3 where soil
17 analyses demonstrate that other soil factors, including,
18 but not limited to, soil pH, cation exchange capacity,
19 organic matter content, or clay content, will limit
20 mobility and availability of the metals. No later than
21 June 30, 1999, the director shall propose revisions to
22 Table 3 to adequately protect soil quality, human health
23 and the environment',

1 And,

2 On page 20, by striking the following from Table 3:
3 "NOTE: Table 3 of this rule will automatically be repealed
4 and replaced with Table 3A of this rule on December 31,
5 1997, unless the provision of paragraph 3.2.2 of this rule
6 is modified prior to that date.",

7 And,

8 On page 21, by striking out all of Table 3A.

9 (j) The legislative ~~rules~~ rule filed in the state
10 register on the thirty-first day of July, one thousand nine
11 hundred ninety-five, authorized under the authority of
12 section four, article five, chapter twenty-two of this
13 code, relating to the division of environmental protection
14 (to prevent and control of air pollution from the emission
15 of volatile organic compounds, 45 CSR 21), ~~are~~ is
16 authorized with the following amendment:

17 "On pages 170 and 171, by striking out section 40 in
18 its entirety and inserting in lieu thereof a new section
19 40, to read as follows:

20 \$45-21-40. Other Facilities that Emit Volatile Organic
21 Compound (VOC).

22 40.1. Applicability.

23 a. This section 40. applies to any facility that has

1 aggregate maximum theoretical emissions of 90.7 megagrams
2 (mg) (100 tons) or more of volatile organic compounds
3 (VOCs) per calendar year in the absence of control devices;
4 provided that this section 40. applies to any source or
5 sources within such facility other than those sources
6 subject to regulation under sections 11. through 39. VOC
7 emissions from sources regulated under sections 11. through
8 39., but which fall below the applicability thresholds of
9 these sections, and thus are not subject to the emissions
10 control standards of these sections, shall be included in
11 the determination of maximum theoretical emissions for a
12 facility but shall not be subject to the requirements of
13 this section 40. Emissions from sources listed in section
14 40.1.d. shall not be included in the determination of
15 maximum theoretical emissions for a facility.

16 b. The owner or operator of a coating line or
17 operation, whose emissions are below this applicability
18 threshold, shall comply with the certification,
19 recordkeeping, and reporting requirements of section
20 40.6.a.

21 c. The owner or operator of a non-coating source,
22 whose emissions are below this applicability threshold,
23 shall comply with the certification, recordkeeping, and

1 reporting requirements of section 40.6.b.

2 d. The requirements of this section 40. shall not
3 apply to coke ovens (including by-product recovery plants),
4 fuel combustion sources, barge loading facilities, jet
5 engine test cells, vegetable oil processing facilities,
6 wastewater treatment facilities, iron and steel production,
7 surface impoundments, pits; and boilers, industrial
8 furnaces, and incinerators having a destruction efficiency
9 of 95 percent or greater.

10 e. The requirements of this section 40. shall not
11 apply to any facility bound by an order or permit,
12 enforceable by the Director, which limits the facility's
13 emissions to less than 100 tons of VOC per calendar year
14 without the application of control devices.

15 40.2. Definitions. -- As used in this section 40., all
16 terms not defined herein shall have the meaning given them
17 in section 2.

18 a. 'Reasonably available control measures' (also
19 denoted as RACM) means an emission limit or limits that
20 reflect the application of control technology and/or
21 abatement techniques or measures that are reasonably
22 available, considering technological and economic
23 feasibility. Such emission limits may be considered on a

1 plant-wide basis to achieve emission reduction requirements
2 in the most cost effective manner.

3 b. "Fugitive emissions" means those emissions which
4 could not reasonably pass through a stack, chimney, vent,
5 or other functionally equivalent opening.

6 40.3. Standards. -- The owner or operator of a
7 facility subject to this section 40. shall:

8 a. Except as provided in section 40.3.b.,

9 1. With respect to any existing non-fugitive
10 emission source which has maximum theoretical emissions of
11 6 pounds per hour or more, comply with an emission control
12 plan established on a case-by-case basis approved by the
13 Director that meets the definition of reasonably available
14 control measures (RACM) and achieves at least a 90 percent
15 reduction in emissions below the total (aggregate) maximum
16 theoretical emissions from all such non-fugitive emission
17 sources subject to RACM requirements; and

18 2. With respect to each process unit producing a
19 product or products, intermediate or final, in excess of
20 1000 megagrams (Mg) (1,100 tons) per year, regardless of
21 whether such product or products are listed in 40 CFR
22 60.489, comply with an emission control plan for fugitive
23 sources using the methods and criteria of section 37., or

1 alternative methods and criteria approved by the Director.
2 The Director may exempt a process unit from fugitive
3 emission control requirements upon satisfactory
4 demonstration that emissions are of minor significance.

5 b. With respect to such sources as described in
6 sections 40.3.a.1. and 40.3.a.2., comply with emission
7 limits and measures based upon an alternative emissions
8 reduction plan approved by the Director considering
9 technical, economic and air quality benefit considerations
10 that, at a minimum, maintains emission control measures
11 incorporated as part of any federally approved maintenance
12 plan for the county or area in which the source is located.

13 c. With respect to any source at a facility subject to
14 this section 40., which source has maximum theoretical
15 emissions of 6 pounds per hour or more and is constructed,
16 modified or begins operating after the effective date of
17 this rule, comply with a control plan developed on a case-
18 by-case basis approved by the Director that meets the
19 definition of reasonably available control technology
20 (RACT) in section 2.60. for both fugitive and non-
21 fugitive emission sources.

22 40.4. Submissions and Approval of Control Plans

23 a. Within 90 days after the effective date of this

1 rule, the owner or operator of a facility subject to this
2 section 40. shall submit any required amendments to the
3 case-by-case RACT control plans previously submitted to the
4 Director, that revise such control plans to meet the
5 definition of reasonably available control measures (RACM).

6 b. Notwithstanding the provisions of section 9.2.,
7 the owner or operator of a facility subject to this rule
8 solely due to this section 40., that requires a major
9 process change and/or major capital investment to comply
10 with RACM requirements, may petition the Director for an
11 additional extension beyond December 31, 1996, for
12 compliance certification, and the Director may grant such
13 extension when warranted. Provided however, such
14 compliance certification date shall be no later July 31,
15 1997.

16 c. The Director shall not approve a RACM plan or an
17 alternative emissions reduction plan under this section 40.
18 unless such plan includes:

19 1. A commitment to develop and submit a
20 complete RACT plan to the Director within 180 days of a
21 finding by the Director that a violation of the National
22 Ambient Air Quality Standard for ozone has occurred within
23 the county or maintenance area in which the source is

1 located; and

2 2. A commitment to achieving full
3 implementation of RACT within 2 years of approval of the
4 RACT plan by the Director.

5 d. A finding by the Director that a violation of
6 the National Ambient Air Quality Standard for ozone has
7 occurred shall be made based upon verification of a
8 monitored ozone standard violation in the county or
9 maintenance area in which the source is located. The three
10 maintenance areas (the Huntington area, comprising Cabell
11 and Wayne counties; the Charleston area, comprising Kanawha
12 and Putnam counties; and the Parkersburg area, comprising
13 Wood county) shall be treated separately and independently
14 for any such finding(s).

15 e. All RACM control plans, RACT control plans, and
16 alternative emissions reduction plans approved by the
17 Director pursuant to this section 40, shall be embodied in
18 a consent order or permit in accordance with 45CSR13 or
19 45CSR30, as required. A facility owner or operator may at
20 any time petition the Director to approve revisions to
21 these plans. The decision concerning said petition shall
22 be issued by the Director in accordance with 45CSR13 or
23 45CSR30, as required, or a consent order. Any such

1 revisions shall be subject to the public participation
2 requirements of 45CSR13 or 45CSR30.

3 f. The owner or operator of a facility subject to
4 this section 40. may submit for approval by the Director an
5 emission control plan that meets the definition of
6 reasonably available control technology (RACT) in section
7 2.60.

8 40.5. Test methods and procedures. -- The owner or
9 operator of any source subject to this section 40. shall
10 demonstrate compliance with section 40.3. by using the
11 applicable test methods specified in sections 41. through
12 46 or by other means approved by the Director.
13 Notwithstanding the requirements of section 41.1., EPA
14 approval for alternate test methods to demonstrate
15 compliance shall not be required for sources which are
16 subject solely to emission control requirements specified
17 in section 40.3.

18 40.6. Reporting and Recordkeeping Requirements for
19 Exempt Non-Control Technique Guideline (CTG) Sources.

20 a. An owner or operator of a coating line or
21 operation that is exempt from the emission limitations in
22 section 40.3. shall comply with the certification,
23 recordkeeping, and reporting requirements in section 4.2.

1 b. An owner or operator of a non-coating source
2 that is exempt from the emission limitations in section
3 40.3. shall submit, upon request by the Director, records
4 that document that the source is exempt from these
5 requirements.

6 1. These records shall be submitted to the
7 Director within 30 days from the date of request.

8 2. If such records are not made available, the
9 source will be considered subject to the limits in section
10 40.3.

11 40.7. Reporting and Recordkeeping Requirements for
12 Subject Non-CTG Coating Sources. -- An owner or operator of
13 a coating line or operation subject to this section 40. and
14 complying with section 40.3. shall comply with the
15 certification, recordkeeping, and reporting requirements in
16 section 4.

17 40.8. Reporting and Recordkeeping Requirements for
18 Subject Non-CTG, Non-Coating Sources.

19 a. The owner or operator of the subject VOC sources
20 shall perform all testing and maintain the results of all
21 tests and calculations required under sections 40.3. and
22 40.5. to demonstrate that the subject source is in
23 compliance.

1 b. The owner or operator of the subject VOC source
2 shall maintain these records in a readily accessible
3 location for a minimum of 3 years, and shall make these
4 records available to the Director upon verbal or written
5 request.

6 c. The owner or operator of any facility containing
7 sources subject to this section 40. shall comply with the
8 requirements in section 5. except that such requirements,
9 as they apply to sources solely subject to this section
10 40., may be modified by the Director upon petition by the
11 owner or operator. Any such modified requirements shall be
12 embodied in the facility's control plan (RACM, RACT or
13 alternative plan) and reflected in the associated consent
14 order or permit issued pursuant to 45CSR13 or 45CSR30.'" "

15 (k) The legislative ~~rules~~ rule filed in the state
16 register on the twenty-seventh day of July, one thousand
17 nine hundred ninety-five, authorized under the authority of
18 section five, article twelve, chapter twenty-two of this
19 code, modified by the division of environmental protection
20 to meet the objections of the legislative rule-making
21 review committee and refiled in the state register on the
22 seventeenth day of January, one thousand nine hundred
23 ninety-six, relating to the division of environmental

1 protection (monitoring well design standards, 47 CSR 60),
2 ~~are~~ is authorized.

3 (1) The legislative ~~rules~~ rule filed in the state
4 register on the thirty-first day of July, one thousand nine
5 hundred ninety-five, authorized under the authority of
6 section five, article ~~fifteen~~, chapter twenty-two of this
7 code, modified by the division of environmental protection
8 to meet the objections of the legislative rule-making
9 review committee and refiled in the state register on the
10 twenty-fourth day of January, one thousand nine hundred
11 ninety-six, relating to the division of environmental
12 protection (solid waste management, 47 CSR 38), ~~are~~ is
13 authorized with the following amendments:

14 "On page 37, subdivision 3.8.4, after the words 'from
15 the uppermost' by striking the word 'significant.'

16 On page 142, by striking the existing subdivision
17 4.11.2.c.A and inserting in lieu thereof the following:

18 '4.11.2.c.A

19 The monitoring frequency for all constituents listed in
20 Appendix I of this rule, must be at least twice a year
21 during the active life of the facility, including closure
22 and the post-closure periods. The director may require
23 more frequent monitoring on a site-specific basis by

1 considering aquifer flow rate and existing quality of the
2 groundwater.'

3 On page 148, by striking the existing subdivision
4 4.11.3.i.A. and inserting in lieu thereof the following:

5 '4.11.3.i.A.

6 The director may consider an alternative groundwater
7 protection standard in consultation with the environmental
8 quality board pursuant to 47CSR57 for constituents for
9 which water quality standards have not been established.'

10 On page 151, subdivision 4.11.5., by following the
11 words 'any applicable groundwater quality protection
12 standards' by inserting the words 'and/or background
13 groundwater quality, pursuant to the requirements of the
14 Groundwater Protection Act, WVC §22-12-1 et seq.'

15 On page 152, subdivision 4.11.6.b.A., by following the
16 words 'Be protective of human health and the environment'
17 inserting the words 'and maintain existing groundwater
18 quality, pursuant to the requirements of the Groundwater
19 Protection Act, WVC §22-12-1 et seq.'

20 On page 154, subdivision 4.11.6.d.B.(f), by striking
21 the words 'Resource value of the aquifer' and inserting in
22 lieu thereof the words 'The hydrogeologic characteristics
23 of the facility and the surrounding land,'

1 On page 154, subdivision 4.11.6.d.B(f).(e) by striking
2 out the words "The hydrogeologic characteristics of the
3 facility and surrounding land;

4 And, by renumbering and relettering the remaining
5 subdivisions of the rule.

6 On page 156, subdivision 4.11.7.a.A., by following the
7 words 'Demonstrate compliance with' inserting the words
8 'the Groundwater Protection Act, WVC §22-12-1 et seq.,
9 and/or the''

10 And,

11 On page 173, subdivision 5.4.3, by adding the
12 following sentence to the end of the subdivision: 'A class
13 D facility other than a class D-1 solid waste facility
14 shall not exceed two (2) acres in size.'

15 (m) The legislative rule filed in the state register
16 on the twenty-ninth day of August, one thousand nine
17 hundred ninety-six, authorized under the authority of
18 section three, article one, chapter twenty-two, of this
19 code, modified by the division of environmental protection
20 to meet the objections of the legislative rule-making
21 review committee and refiled in the state register on the
22 twentieth day of December, one thousand nine hundred
23 ninety-six, relating to the division of environmental

1 protection (WV/NPDES regulations for coal mining
2 facilities, 47 CSR 30), is authorized.

3

4 NOTE: The purpose of this bill is to authorize the
5 Division of Environmental Protection to promulgate a
6 legislative rule relating to WV/NPDES Regulations for Coal
7 Mining Facilities.

8

9 Strike-throughs indicate language that would be
10 stricken from the present law, and underscoring indicates
11 new language that would be added.

2331

H. B. 2331

1 Bill-DEP, WV/NPDES

2
3 (By Delegate(s) Douglas, Hunt, Compton,
4 Faircloth, Linch and Riggs)

5 [Introduced March 3, 1997; referred to the
6 Committee on the Judiciary.]

7
8
9
10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to WV/NPDES regulations for coal mining facilities.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
22 PROMULGATE LEGISLATIVE RULES.

23 §64-3-1. Division of environmental protection.

1 (a) The legislative ~~rules~~ rule filed in the state
2 register on twenty-eighth day of July, one thousand nine
3 hundred ninety-five, authorized under the authority of
4 section four, article five, chapter twenty-two of this
5 code, relating to the division of environmental protection
6 (emission standards for hazardous air pollutants pursuant
7 to 40 CFR Part 63, 45 CSR 34), ~~are~~ is authorized.

8 (b) The legislative ~~rules~~ rule filed in the state
9 register on the twenty-eighth day of July, one thousand
10 nine hundred ninety-five, authorized under the authority of
11 section four, article five, chapter twenty-two of this
12 code, modified by the division of environmental protection
13 to meet the objections of the legislative rule-making
14 review committee and refiled in the state register on the
15 twenty-seventh day of October, one thousand nine hundred
16 ninety-five, relating to the division of environmental
17 protection (to prevent and control air pollution from
18 hazardous waste treatment, storage or disposal facilities,
19 45 CSR 25), ~~are~~ is authorized.

20 (c) The legislative ~~rules~~ rule filed in the state
21 register on the twenty-eighth day of July, one thousand
22 nine hundred ninety-five, authorized under the authority of
23 section four, article five, chapter twenty-two of this

1 code, relating to the division of environmental protection
2 (acid rain provisions and permits, 45 CSR 33), ~~are~~ is
3 authorized.

4 (d) The legislative ~~rules~~ rule filed in the state
5 register on the thirty-first day of July, one thousand nine
6 hundred ninety-five, authorized under the authority of
7 section six, article seventeen, chapter twenty-two of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 eighteenth day of January, one thousand nine hundred
12 ninety-six, relating to the division of environmental
13 protection (underground storage tanks, 47 CSR 36), ~~are~~ is
14 authorized.

15 (e) The legislative ~~rules~~ rule filed in the state
16 register on the thirty-first day of July, one thousand nine
17 hundred ninety-five, authorized under the authority of
18 section six, article eighteen, chapter twenty-two of this
19 code, modified by the division of environmental protection
20 to meet the objections of the legislative rule-making
21 review committee and refiled in the state register on the
22 eighteenth day of January, one thousand nine hundred
23 ninety-six, relating to the division of environmental

1 protection (hazardous waste management regulations, 47 CSR
2 35), ~~are~~ is authorized.

3 (f) The legislative ~~rules~~ rule filed in the state
4 register on the thirty-first day of July, one thousand nine
5 hundred ninety-five, authorized under the authority of
6 section four, article three, chapter twenty-two of this
7 code, modified by the division of environmental protection
8 to meet the objections of the legislative rule-making
9 review committee and refiled in the state register on the
10 twenty-third day of January, one thousand nine hundred
11 ninety-six, relating to the division of environmental
12 protection (surface mining and reclamation regulations, 38
13 CSR 2), ~~are~~ is authorized with the following amendments:

14 "On page 64, section 3.27, after the word 'Director'
15 by striking out the word 'may' and inserting in lieu
16 thereof the word 'shall';

17 On page 64, section 3.27, after the word 'completed'
18 by striking out the remainder of the first paragraph and
19 inserting in lieu thereof the following words:

20 'and reclamation activities are ongoing.'

21 On page 156, section 11.6(c)(6)(A) after the word
22 'operations' by striking out the words 'within five (5)
23 years of the date of SMA approval,';

1 On page 156, section 11.6(c)(6)(B) after the word
2 '(95-87)' by striking out the words 'within five (5) years
3 of the date of SMA approval,';

4 On page 157, section 11.6(c)(6)(C) after the word
5 'State' by striking out the words 'within five (5) years of
6 the date of SMA approval,';

7 On page 163, section 11.6(d)(6)(A), after the word
8 'applicant' by striking out the words 'within five (5)
9 years of the date of SMA approval,';

10 On page 164, section 11.6(d)(6)(B), after the word
11 '95-87' by striking out the words 'within five (5) years of
12 the date of SMA approval,';

13 On page 164, section 11.6(d)(6)(C), after the word
14 'wetlands' by striking out the words 'within five (5) years
15 of the date of SMA approval,';

16 On page 169, section 11.6(e)(5)(A), after the word
17 '95-87' by striking out the words 'within five (5) years of
18 the date of SMA approval,';

19 On page 169, section 11.6(e)(5)(B), after the word
20 'wetlands' by striking out the words 'within five (5) years
21 of the date of SMA approval,';

22 On page 175, section 11.6(f)(5)(A), after the word
23 '95-87', by striking out the words 'within five (5) years

1 of the date of SMA approval,':

2 On page 175, section 11.6(f)(5)(B), after the word
3 'enhancement' by striking out the words 'of wetlands within
4 five (5) years of the date of SMA approval,'.

5 On page 178, section 12.2 subsection (e) by striking
6 12.2.e in its entirety and inserting in lieu thereof the
7 following:

8 'Notwithstanding any other provisions of this rule, no
9 bond release or reduction will be granted if, at the time,
10 water discharged from or affected by the operation requires
11 chemical treatment in order to comply with applicable
12 effluent limitations or water quality standards: *Provided,*
13 That the Director may approve a request for Phase I but not
14 Phase II or III, release if the applicant demonstrates to
15 the satisfaction of the Director that either:

16 (A) The remaining bond is adequate to assure long term
17 treatment of the drainage; or

18 (B) The operator has irrevocably committed other
19 financial resources which are adequate to assure long term
20 treatment of the drainage: *Provided,* That the alternate
21 financial resources must be in acceptable form, and meet
22 the standards set forth in Section 11 of the Act and
23 Section 11 of this rule: *Provided, however,* That the

1 alternate financial arrangements shall provide a mechanism
2 whereby the Director can assume management of the resources
3 and treatment work in the event that the operator defaults
4 for any reason: And provided further, That default on a
5 treatment obligation under this paragraph shall be
6 considered equivalent to a bond forfeiture, and the
7 operator will be subject to penalties and sanctions,
8 including permit blocking, as if a bond forfeiture had
9 occurred.

10 In order to make such demonstration as referenced
11 above, the applicant shall address, at a minimum, the
12 current and projected quantity and quality of drainage to
13 be treated, the anticipated duration of treatment, the
14 estimated capital and operating cost of the treatment
15 facility, and the calculations which demonstrate the
16 adequacy of the remaining bond or of the alternate
17 financial resources.

18 On page sixteen, section 38-2-2.106, after the words
19 'sum of the loading' by inserting the words 'or driving';
20 and by striking out the words 'in a constructed valley
21 fill, backfill, dam, or refuse pile' and inserting in lieu
22 thereof the words 'as determined by acceptable engineering
23 practices';

1 On page twenty-eight, section 38-2-3.2(e), after the
2 words 'limited number of minor changes' by inserting the
3 words 'that do not significantly affect the health, safety
4 or welfare of the public and';

5 On page thirty-six, section 38-2-3.6(h)(5), after the
6 words 'as defined in' by striking out the words 'Article 5D
7 of Chapter 20' and inserting in lieu thereof the words
8 'Article 14 of Chapter 22';

9 On page thirty-nine, section 38-2-3.8(c), at the end
10 after the words 'reasonable time for compliance.', by
11 inserting a new sentence to read as follows: 'Provided,
12 That those structures and facilities, where it can be
13 demonstrated that reconstruction or revision would result
14 in greater environmental harm and the performance standards
15 set forth in the Act and these regulations can otherwise be
16 met, may be exempt from revision or reconstruction.';

17 On page one hundred seventy-eight, section 38-2-
18 12.2(d), after the words 'until all coal extraction
19 operations' by inserting the words 'for the permit or
20 increment thereof', and after the words 'the entire
21 disturbed area' by inserting the words 'for the permit or
22 increment thereof';

23 On page one hundred ninety-seven, section 38-2-

1 14.3(c)(2), after the words 'medium is the best' by
2 inserting the word 'reasonably';

3 And,

4 On page two hundred fifteen, section 38-2-14.14(e)(4),
5 by striking the sentence 'Runoff from areas above and
6 adjacent to the fill shall not be allowed to flow onto the
7 fill surface, and shall be diverted into stabilized
8 diversion channels, designed and constructed to safely pass
9 the peak runoff from a 100-year, 24 hour precipitation
10 event.' and inserting in lieu thereof the sentences
11 'Surface water runoff from areas above and adjacent to the
12 fill shall be diverted into properly designed and
13 constructed stabilized diversion channels which have been
14 designed using best current technology to safely pass the
15 peak runoff from a 100 year, 24 hour precipitation event.
16 The channel shall be designed and constructed to ensure
17 stability of the fill, control erosion, and minimize water
18 infiltration into the fill.'

19 (g) The legislative ~~rules~~ rule filed in the state
20 register on the twenty-sixth day of July, one thousand nine
21 hundred ninety-five, authorized under the authority of
22 section four, article twenty-one, chapter twenty-two of
23 this code, modified by the division of environmental

1 protection to meet the objections of the legislative
2 rule-making review committee and refiled in the state
3 register on the fourteenth day of December, one thousand
4 nine hundred ninety-five, relating to the division of
5 environmental protection (coalbed methane wells, 38 CSR
6 23), ~~are~~ is authorized.

7 (h) The legislative ~~rules~~ rule filed in the state
8 register on the twenty-third day of November, one thousand
9 nine hundred ninety-four, authorized under the authority of
10 section eight, article eleven, chapter twenty of this code,
11 modified by the division of environmental protection to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the
14 twentieth day of December, one thousand nine hundred
15 ninety-five, relating to the division of environmental
16 protection (waste tire management, 47 CSR 38G), ~~are~~ is
17 authorized.

18 (i) The legislative ~~rules~~ rule filed in the state
19 register on the twenty-second day of June, one thousand
20 nine hundred ninety-five, authorized under the authority of
21 section twenty, article fifteen, chapter twenty-two of this
22 code, modified by the division of environmental protection
23 to meet the objections of the legislative rule-making

1 review committee and refiled in the state register on the
2 twenty-second day of December, one thousand nine hundred
3 ninety-five, relating to the division of environmental
4 protection (sewage sludge management, 47 CSR 38D), ~~are~~ is
5 authorized with the amendments set forth below:

6 On page seven, section 3.2.2, by striking out the
7 words "Table 3 of this rule will automatically be repealed
8 and replaced with Table 3A of this rule on December 31,
9 1997, unless this provision is modified prior to that
10 date:";

11 And,

12 On page seven, section 3.2.2, after the word "rule."
13 by inserting the following: The director is authorized
14 until Dec. 31, 1999, to issue variances to this section to
15 allow land application to soils which exceed the maximum
16 soil concentrations of metals listed in Table 3 where soil
17 analyses demonstrate that other soil factors, including,
18 but not limited to, soil pH, cation exchange capacity,
19 organic matter content, or clay content, will limit
20 mobility and availability of the metals. No later than
21 June 30, 1999, the director shall propose revisions to
22 Table 3 to 'adequately protect soil quality, human health
23 and the environment',

1 And,

2 On page 20, by striking the following from Table 3:
3 "NOTE: Table 3 of this rule will automatically be repealed
4 and replaced with Table 3A of this rule on December 31,
5 1997, unless the provision of paragraph 3.2.2 of this rule
6 is modified prior to that date.",

7 And,

8 On page 21, by striking out all of Table 3A.

9 (j) The legislative ~~rules~~ rule filed in the state
10 register on the thirty-first day of July, one thousand nine
11 hundred ninety-five, authorized under the authority of
12 section four, article five, chapter twenty-two of this
13 code, relating to the division of environmental protection
14 (to prevent and control of air pollution from the emission
15 of volatile organic compounds, 45 CSR 21), ~~are~~ is
16 authorized with the following amendment:

17 "On pages 170 and 171, by striking out section 40 in
18 its entirety and inserting in lieu thereof a new section
19 40, to read as follows:

20 §45-21-40. Other Facilities that Emit Volatile Organic
21 Compound (VOC).

22 40.1. Applicability.

23 a. This section 40. applies to any facility that has

1 aggregate maximum theoretical emissions of 90.7 megagrams
2 (mg) (100 tons) or more of volatile organic compounds
3 (VOCs) per calendar year in the absence of control devices;
4 provided that this section 40. applies to any source or
5 sources within such facility other than those sources
6 subject to regulation under sections 11. through 39. VOC
7 emissions from sources regulated under sections 11. through
8 39., but which fall below the applicability thresholds of
9 these sections, and thus are not subject to the emissions
10 control standards of these sections, shall be included in
11 the determination of maximum theoretical emissions for a
12 facility but shall not be subject to the requirements of
13 this section 40. Emissions from sources listed in section
14 40.1.d. shall not be included in the determination of
15 maximum theoretical emissions for a facility.

16 b. The owner or operator of a coating line or
17 operation, whose emissions are below this applicability
18 threshold, shall comply with the certification,
19 recordkeeping, and reporting requirements of section
20 40.6.a.

21 c. The owner or operator of a non-coating source,
22 whose emissions are below this applicability threshold,
23 shall comply with the certification, recordkeeping, and

1 reporting requirements of section 40.6.b.

2 d. The requirements of this section 40. shall not
3 apply to coke ovens (including by-product recovery plants),
4 fuel combustion sources, barge loading facilities, jet
5 engine test cells, vegetable oil processing facilities,
6 wastewater treatment facilities, iron and steel production,
7 surface impoundments, pits; and boilers, industrial
8 furnaces, and incinerators having a destruction efficiency
9 of 95 percent or greater.

10 e. The requirements of this section 40. shall not
11 apply to any facility bound by an order or permit,
12 enforceable by the Director, which limits the facility's
13 emissions to less than 100 tons of VOC per calendar year
14 without the application of control devices.

15 40.2. Definitions. -- As used in this section 40., all
16 terms not defined herein shall have the meaning given them
17 in section 2.

18 a. 'Reasonably available control measures' (also
19 denoted as RACM) means an emission limit or limits that
20 reflect the application of control technology and/or
21 abatement techniques or measures that are reasonably
22 available, considering technological and economic
23 feasibility. Such emission limits may be considered on a

1 plant-wide basis to achieve emission reduction requirements
2 in the most cost effective manner.

3 b. "Fugitive emissions" means those emissions which
4 could not reasonably pass through a stack, chimney, vent,
5 or other functionally equivalent opening.

6 40.3. Standards. -- The owner or operator of a
7 facility subject to this section 40. shall:

8 a. Except as provided in section 40.3.b.,

9 1. With respect to any existing non-fugitive
10 emission source which has maximum theoretical emissions of
11 6 pounds per hour or more, comply with an emission control
12 plan established on a case-by-case basis approved by the
13 Director that meets the definition of reasonably available
14 control measures (RACM) and achieves at least a 90 percent
15 reduction in emissions below the total (aggregate) maximum
16 theoretical emissions from all such non-fugitive emission
17 sources subject to RACM requirements; and

18 2. With respect to each process unit producing a
19 product or products, intermediate or final, in excess of
20 1000 megagrams (Mg) (1,100 tons) per year, regardless of
21 whether such product or products are listed in 40 CFR
22 60.489, comply with an emission control plan for fugitive
23 sources using the methods and criteria of section 37., or

1 alternative methods and criteria approved by the Director.
2 The Director may exempt a process unit from fugitive
3 emission control requirements upon satisfactory
4 demonstration that emissions are of minor significance.

5 b. With respect to such sources as described in
6 sections 40.3.a.1. and 40.3.a.2., comply with emission
7 limits and measures based upon an alternative emissions
8 reduction plan approved by the Director considering
9 technical, economic and air quality benefit considerations
10 that, at a minimum, maintains emission control measures
11 incorporated as part of any federally approved maintenance
12 plan for the county or area in which the source is located.

13 c. With respect to any source at a facility subject to
14 this section 40., which source has maximum theoretical
15 emissions of 6 pounds per hour or more and is constructed,
16 modified or begins operating after the effective date of
17 this rule, comply with a control plan developed on a case-
18 by-case basis approved by the Director that meets the
19 definition of reasonably available control technology
20 (RACT) in section 2.60. for both fugitive and non-
21 fugitive emission sources.

22 40.4. Submissions and Approval of Control Plans

23 a. Within 90 days after the effective date of this

1 rule, the owner or operator of a facility subject to this
2 section 40. shall submit any required amendments to the
3 case-by-case RACT control plans previously submitted to the
4 Director, that revise such control plans to meet the
5 definition of reasonably available control measures (RACM).

6 b. Notwithstanding the provisions of section 9.2.,
7 the owner or operator of a facility subject to this rule
8 solely due to this section 40., that requires a major
9 process change and/or major capital investment to comply
10 with RACM requirements, may petition the Director for an
11 additional extension beyond December 31, 1996, for
12 compliance certification, and the Director may grant such
13 extension when warranted. Provided however, such
14 compliance certification date shall be no later July 31,
15 1997.

16 c. The Director shall not approve a RACM plan or an
17 alternative emissions reduction plan under this section 40.
18 unless such plan includes:

- 19 1. A commitment to develop and submit a
20 complete RACT plan to the Director within 180 days of a
21 finding by the Director that a violation of the National
22 Ambient Air Quality Standard for ozone has occurred within
23 the county or maintenance area in which the source is

1 located; and

2 2. A commitment to achieving full
3 implementation of RACT within 2 years of approval of the
4 RACT plan by the Director.

5 d. A finding by the Director that a violation of
6 the National Ambient Air Quality Standard for ozone has
7 occurred shall be made based upon verification of a
8 monitored ozone standard violation in the county or
9 maintenance area in which the source is located. The three
10 maintenance areas (the Huntington area, comprising Cabell
11 and Wayne counties; the Charleston area, comprising Kanawha
12 and Putnam counties; and the Parkersburg area, comprising
13 Wood county) shall be treated separately and independently
14 for any such finding(s).

15 e. All RACM control plans, RACT control plans, and
16 alternative emissions reduction plans approved by the
17 Director pursuant to this section 40. shall be embodied in
18 a consent order or permit in accordance with 45CSR13 or
19 45CSR30, as required. A facility owner or operator may at
20 any time petition the Director to approve revisions to
21 these plans. The decision concerning said petition shall
22 be issued by the Director in accordance with 45CSR13 or
23 45CSR30, as required, or a consent order. Any such

1 revisions shall be subject to the public participation
2 requirements of 45CSR13 or 45CSR30.

3 f. The owner or operator of a facility subject to
4 this section 40. may submit for approval by the Director an
5 emission control plan that meets the definition of
6 reasonably available control technology (RACT) in section
7 2.60.

8 40.5. Test methods and procedures. -- The owner or
9 operator of any source subject to this section 40. shall
10 demonstrate compliance with section 40.3. by using the
11 applicable test methods specified in sections 41. through
12 46. or by other means approved by the Director.
13 Notwithstanding the requirements of section 41.1., EPA
14 approval for alternate test methods to demonstrate
15 compliance shall not be required for sources which are
16 subject solely to emission control requirements specified
17 in section 40.3.

18 40.6. Reporting and Recordkeeping Requirements for
19 Exempt Non-Control Technique Guideline (CTG) Sources.

20 a. An owner or operator of a coating line or
21 operation that is exempt from the emission limitations in
22 section 40.3. shall comply with the certification,
23 recordkeeping, and reporting requirements in section 4.2.

1 b. An owner or operator of a non-coating source
2 that is exempt from the emission limitations in section
3 40.3. shall submit, upon request by the Director, records
4 that document that the source is exempt from these
5 requirements.

6 1. These records shall be submitted to the
7 Director within 30 days from the date of request.

8 2. If such records are not made available, the
9 source will be considered subject to the limits in section
10 40.3.

11 40.7. Reporting and Recordkeeping Requirements for
12 Subject Non-CTG Coating Sources. -- An owner or operator of
13 a coating line or operation subject to this section 40. and
14 complying with section 40.3. shall comply with the
15 certification, recordkeeping, and reporting requirements in
16 section 4.

17 40.8. Reporting and Recordkeeping Requirements for
18 Subject Non-CTG, Non-Coating Sources.

19 a. The owner or operator of the subject VOC sources
20 shall perform all testing and maintain the results of all
21 tests and calculations required under sections 40.3. and
22 40.5. to demonstrate that the subject source is in
23 compliance.

1 b. The owner or operator of the subject VOC source
2 shall maintain these records in a readily accessible
3 location for a minimum of 3 years, and shall make these
4 records available to the Director upon verbal or written
5 request.

6 c. The owner or operator of any facility containing
7 sources subject to this section 40. shall comply with the
8 requirements in section 5. except that such requirements,
9 as they apply to sources solely subject to this section
10 40., may be modified by the Director upon petition by the
11 owner or operator. Any such modified requirements shall be
12 embodied in the facility's control plan (RACM, RACT or
13 alternative plan) and reflected in the associated consent
14 order or permit issued pursuant to 45CSR13 or 45CSR30."

15 (k) The legislative rules rule filed in the state
16 register on the twenty-seventh day of July, one thousand
17 nine hundred ninety-five, authorized under the authority of
18 section five, article twelve, chapter twenty-two of this
19 code, modified by the division of environmental protection
20 to meet the objections of the legislative rule-making
21 review committee and refiled in the state register on the
22 seventeenth day of January, one thousand nine hundred
23 ninety-six, relating to the division of environmental

1 protection (monitoring well design standards, 47 CSR 60),
2 ~~are~~ is authorized.

3 (1) The legislative ~~rules~~ rule filed in the state
4 register on the thirty-first day of July, one thousand nine
5 hundred ninety-five, authorized under the authority of
6 section five, article fifteen, chapter twenty-two of this
7 code, modified by the division of environmental protection
8 to meet the objections of the legislative rule-making
9 review committee and refiled in the state register on the
10 twenty-fourth day of January, one thousand nine hundred
11 ninety-six, relating to the division of environmental
12 protection (solid waste management, 47 CSR 38), ~~are~~ is
13 authorized with the following amendments:

14 "On page 37, subdivision 3.8.4, after the words 'from
15 the uppermost' by striking the word 'significant.'

16 On page 142, by striking the existing subdivision
17 4.11.2.c.A and inserting in lieu thereof the following:

18 '4.11.2.c.A

19 The monitoring frequency for all constituents listed in
20 Appendix I of this rule, must be at least twice a year
21 during the active life of the facility, including closure
22 and the post-closure periods. The director may require
23 more frequent monitoring on a site-specific basis by

1 considering aquifer flow rate and existing quality of the
2 groundwater.'

3 On page 148, by striking the existing subdivision
4 4.11.3.i.A. and inserting in lieu thereof the following:
5 '4.11.3.i.A.

6 The director may consider an alternative groundwater
7 protection standard in consultation with the environmental
8 quality board pursuant to 47CSR57 for constituents for
9 which water quality standards have not been established.'

10 On page 151, subdivision 4.11.5., by following the
11 words 'any applicable groundwater quality protection
12 standards' by inserting the words 'and/or background
13 groundwater quality, pursuant to the requirements of the
14 Groundwater Protection Act, WVC §22-12-1 et seq.'

15 On page 152, subdivision 4.11.6.b.A., by following the
16 words 'Be protective of human health and the environment'
17 inserting the words 'and maintain existing groundwater
18 quality, pursuant to the requirements of the Groundwater
19 Protection Act, WVC §22-12-1 et seq.'

20 On page 154, subdivision 4.11.6.d.B.(f), by striking
21 the words 'Resource value of the aquifer' and inserting in
22 lieu thereof the words 'The hydrogeologic characteristics
23 of the facility and the surrounding land,'

1 On page 154, subdivision 4.11.6.d.B(f).(e) by striking
2 out the words "The hydrogeologic characteristics of the
3 facility and surrounding land;

4 And, by renumbering and relettering the remaining
5 subdivisions of the rule.

6 On page 156, subdivision 4.11.7.a.A., by following the
7 words 'Demonstrate compliance with' inserting the words
8 'the Groundwater Protection Act, WVC §22-12-1 et seq.,
9 and/or the''

10 And,

11 On page 173, subdivision 5.4.3, by adding the
12 following sentence to the end of the subdivision: 'A class
13 D facility other than a class D-1 solid waste facility
14 shall not exceed two (2) acres in size.'

15 (m) The legislative rule filed in the state register
16 on the twenty-ninth day of August, one thousand nine
17 hundred ninety-six, authorized under the authority of
18 section three, article one, chapter twenty-two, of this
19 code, modified by the division of environmental protection
20 to meet the objections of the legislative rule-making
21 review committee and refiled in the state register on the
22 twentieth day of December, one thousand nine hundred
23 ninety-six, relating to the division of environmental

1. protection (WV/NPDES regulations for coal mining
2. facilities, 47 CSR 30), is authorized.

3

4 NOTE: The purpose of this bill is to authorize the
5 Division of Environmental Protection to promulgate a
6 legislative rule relating to WV/NPDES Regulations for Coal
7 Mining Facilities.

8

9 Strike-throughs indicate language that would be
10 stricken from the present law, and underscoring indicates
11 new language that would be added.