WEST VIRGINIA SECRETARY OF STATE

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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WEST VIRGINIA SECRETARY OF STATE

FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **47-30**
RULE NAME **WVNPDES Rule for Coal Mining Facilities**

CITE AUTHORITY **§22-1-3(a) and 22-11-4(a)(16)**

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

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

Title-Series: 47-30 Rule Id: 9511 Document: 26050

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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **47-30**
RULE NAME **WVNPDES Rule for Coal Mining Facilities**

CITE AUTHORITY **§22-1-3(a) and 22-11-4(a)(16)**

AUTHORIZING STATUTE(S) CITATION
§22-1-3(a) and 22-11-4(a)(16)

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD
Tuesday, June 24, 2014

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?
Newspaper, WVDEP Web site, news release and email via list server.

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED
Thursday, July 24, 2014

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 2)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **47-30**
RULE NAME **WVNPDES Rule for Coal Mining Facilities**

CITE AUTHORITY **§22-1-3(a) and 22-11-4(a)(16)**

ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED, AMENDMENTS, REASONS FOR AMENDMENTS.

Attached

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE FOLLOWING PUBLIC HEARING: (BE EXACT)

Tuesday, July 29, 2014

NAME, TITLE, ADDRESS AND PHONE FAX EMAIL NUMBERS OF AGENCY PERSON(S) TO RECEIVE ALL WRITTEN CORRESPONDENCE REGARDING THIS RULE

Thomas J Aluise,
Public Information Office
West Virginia Department of Environmental Protection

601-57th Street
Charleston, WV 25304

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 3)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **47-30**
RULE NAME **WVNPDES Rule for Coal Mining Facilities**

CITE AUTHORITY **§22-1-3(a) and 22-11-4(a)(16)**

IF DIFFERENT FROM ABOVE, PLEASE GIVE NAME, TITLE, ADDRESS, AND PHONE NUMBER(S) OF AGENCY PERSON(S) WHO WROTE AND OR HAS RESPONSIBILITY FOR THE CONTENTS OF THIS RULE

Charles S Sturey
Assistant Director
Mining and Reclamation
West Virginia Department of Environmental Protection
601-57th Street
Charleston, WV 25304
Charles.s.sturey@wv.gov
304-926-0499 ext 1526

IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION, GIVE THE DATE UPON WHICH YOU FILED IN THE STATE REGISTER A NOTICE OF THE TIME AND PLACE OF A HEARING FOR THE TAKING OF EVIDENCE AND A GENERAL DESCRIPTION OF THE ISSUES TO BE DECIDED.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 4)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **47-30**
RULE NAME **WVNPDES Rule for Coal Mining Facilities**

CITE AUTHORITY **§22-1-3(a) and 22-11-4(a)(16)**

DATE OF HEARING OR COMMENT PERIOD

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS
None

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

Title-Series: 47-30 Rule Id: 9511 Document: 26050

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **47-30**
RULE NAME **WVNPDES Rule for Coal Mining Facilities**

CITE AUTHORITY **§22-1-3(a) and 22-11-4(a)(16)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

The rule change will have no impact on state government on the costs and revenues of the State

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **47-30**
RULE NAME **WVNPDES Rule for Coal Mining Facilities**

CITE AUTHORITY **§22-1-3(a) and 22-11-4(a)(16)**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **47-30**
RULE NAME **WVNPDES Rule for Coal Mining Facilities**

CITE AUTHORITY **§22-1-3(a) and 22-11-4(a)(16)**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

NA

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **47-30**
RULE NAME **WVNPDES Rule for Coal Mining Facilities**

CITE AUTHORITY **§22-1-3(a) and 22-11-4(a)(16)**

PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

This revision is being proposed as a result of the passage of Senate Bill 615 by the West Virginia Legislature on March 10, 2012 and the language of the W.Va. Code §22-11-6 as modified by Senate Bill 615 and 47 CSR 30, as modified by this proposal will make it consistent with Section 402(k) of the federal Clean Water Act.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

Title-Series: 47-30 Rule Id: 9511 Document: 26050

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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Water Resources Division Of Water And Waste Management**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **47-30**
RULE NAME **WVNPDES Rule for Coal Mining Facilities**

CITE AUTHORITY **§22-1-3(a) and 22-11-4(a)(16)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

This revision is being proposed as a result of the passage of Senate Bill 615 by the West Virginia Legislature on March 10, 2012. The language of the W.Va. Code §22-11-6 as modified by Senate Bill 615 and 47 CSR 30, as modified by this proposal, will make it consistent with Section 402(k) of the federal Clean Water Act and the State's Non-coal non-coal facilities (47 CSR 10) rule .

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Kristin A Boggs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

Title-Series: 47-30 Rule Id: 9511 Document: 26050

TITLE 47
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATER RESOURCES

SERIES 30
WV/NPDES RULE FOR COAL MINING FACILITIES

§47-30-1. General.

1.1. Scope. -- This rule establishes requirements implementing the powers, duties, and responsibilities of W. Va. Code § 22-11-1 with respect to all coal mines and preparation plants and all refuse and waste therefrom in the State.

1.2. Authority. -- W. Va. Code § 22-11-4(a)(16)

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Applicability. -- This rule applies to all facilities covered under the "West Virginia Surface Coal Mining and Reclamation Act."

1.6. Incorporation by Reference. -- Whenever federal statutes or regulations are incorporated into this rule, the reference is to the statute or regulation in effect on July 1, 2006.

1.7. Promulgation History. -- This rule originally became effective on the May , 1985. Amendments to this rule were made effective on April 24, 1986; May 29, 1987; May 15, 1997; June 1, 2004; July 1, 2009; .

1.8. Conflict of Interest. -- The Secretary or his or her 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.

1.8.a. For the purposes of this paragraph:

1.8.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.

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

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

1.8.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 identity of the primary sources of income.

§47-30-2. Definitions.

The definitions set forth in W. Va. Code § 22-11-3 apply to this rule along with the following definitions, unless the context clearly indicates otherwise.

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

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

2.3. "Article 11" means the West Virginia Water Pollution Control Act, W. Va. Code § 22-11-1, et seq.

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

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

2.6. "Best Professional Judgment" or "BPJ" means the Secretary'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 Secretary under the Clean Water Act (CWA) Sections 301 and 402.

2.7. "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).

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

2.9. "Coal Mines and 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 11, but excluding dredging operations or the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16⅔%) of the tonnage of minerals removed for purposes of commercial use or sale.

2.10. "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.

2.11. "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.

2.12. "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.

2.13. "Coal Remining Operation" means a coal mining operation at a site on which coal mining was previously conducted and where the site has been abandoned or the performance bond has been forfeited.

2.14. "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.

2.15. "Discharge" means, when used without qualification, the discharge of a pollutant.

2.16. "Discharge of a Pollutant" means:

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

2.16.b. dditions of pollutants into waters of the State from: surface runoff that is collected or channeled by man; discharges through pipes, other conveyances owned by a person that 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.

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

2.18. "Draft Permit" means a document prepared under subsection 10.1 of this rule indicating the Secretary's tentative decision to issue, modify, reissue, suspend or revoke a permit.

2.19. "Effluent Limitation" means any restriction established by State or federal law on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into waters of the State.

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 this rule are covered under 40 C.F.R. Part 133.

2.21. "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

2.22. "Existing Source" means any coal mine or preparation plant and all refuse or waste therefrom:

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

2.22.b. That is not a new source.

2.23. "Facility" or "Activity" means any coal mine or 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 this rule.

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

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

2.26. "Indirect Discharger" means a nondomestic discharger introducing pollutants into publicly owned treatment works.

2.27. "Interstate Agency" means an agency of two or more states, including West Virginia, established by an agreement or compact approved by Congress, or any other agency of two 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 the CWA and rules promulgated thereunder.

2.28. "Major Facility" means any WV/NPDES facility or activity classified as such by the Secretary or by the Regional Administrator in conjunction with the Secretary.

2.29. "Maximum Daily Discharge Limitation" means the highest allowable daily discharge.

2.30. "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.

2.31. "New Source" means any coal mining facility covered under 40 C.F.R. Part 434, including an abandoned mine that 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 that is subsequently promulgated in accordance with Section 306 of CWA.

2.31.a. In making the determination of major alteration, the Secretary 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 the CWA:

2.31.a.1. Extraction of a coal seam not previously extracted by that mine;

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;

2.31.a.3. Extensive new surface disruption at the mining operation; or

2.31.a.4. Construction of a new shaft, slope or drift.

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 that is subsequently promulgated in accordance with Section 306 of the CWA and that meets the criteria of subsection 12.3 of this rule.

2.31.c. No provision in this definition shall be deemed to affect the classification of a facility as a new source that 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 subsection 12.3 of this rule.

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

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

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. "Privately Owned Treatment Works" means any device or system that is used to treat wastes other than the owner's wastes and is not a POTW as defined in 47 C.S.R. 10 § .

2.36. "Process Wastewater" means any water that, 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. "Proposed Permit" means a WV/NPDES permit prepared after the close of the comment period (and, when applicable, any public hearing) and that is sent to EPA for review before final issuance by the Secretary, pursuant to the Memorandum of Agreement between West Virginia and EPA dated May 10, 1982.

2.38. "Real Time Water Quality Control" means the establishment of an effluent limitation that is based upon a stream-flow-to-discharge-flow ratio, determined by the known characteristics of the stream and the discharge.

2.39. "Recommencing Discharger" means a source that recommences discharge after terminating operations.

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

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

2.42. "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 the CWA, Article 11, and rules promulgated thereunder.

2.43. "Secretary" means the Secretary of the West Virginia Department of Environmental Protection and his or her authorized .

2.44. "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.

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

2.46. "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.

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

2.48. "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 that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that 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.

2.49. "West Virginia Surface Coal Mining and Reclamation Act" or "WVSCMRA" means W. Va. Code § 22-3-1, et seq.

2.50. "WV/NPDES Application" or "Application" means the forms prescribed by the Secretary and approved by the EPA for applying for a permit or permit modification, including any additions, revisions or modifications to the WV/NPDES forms.

2.51. "WV/NPDES Permit" or "Permit" means an authorization issued by the Secretary to implement the requirements of Article , including modifications to permits.

2.52. "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 Requirements; Exemptions:

3.1.a. Permit Requirements. 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 or preparation plant, or any 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.a.6. Conduct activities consisting of discharges of storm water runoff or snow melt composed entirely of flows that are from conveyances used for collecting and conveying precipitation runoff, unless meeting the following requirements:

3.1.a.6.A. The facility shall have a valid WV/NPDES permit;

3.1.a.6.B. The storm water activity shall not involve any mineral removal, pumping of storm water or storm water commingled with mine drainage or refuse drainage;

3.1.a.6.C. The storm water activity shall be constructed and maintained in accordance with the issued Article 3 Permit Revision including incidental boundaries revisions and with the best management practices and performance standards contained in 38 C.S.R. 2 and W. Va. Code § 22-3-1, et seq.;

3.1.a.6.D. equest coverage under this rule shall be submitted on forms prescribed by the Secretary for an Article 3 Permit Revision;

3.1.a.6.E. Authorization to discharge storm water is effective upon the issuance of the corresponding Article 3 Permit Revision;

3.1.a.6.F. Application for reissuance of the NPDES Permit shall include application information on all storm water discharges authorized under this rule; and

3.1.a.6.G. The Secretary may require any storm water discharger authorized by this rule to submit a NPDES modification when the Secretary determines that the receiving stream may be better protected by an individual NPDES modification.

3.1.a.7. A WV/NPDES permit issued pursuant to Section 3 of this rule shall be deemed to be a permit issued in accordance with Article 11 and the CWA.

3.1.a.8. No facility may be an indirect discharger.

3.1.b. Exemptions

3.1.b.1. Discharges of dredged or fill material into waters of the State that are regulated under Section 404 of CWA do not require a NPDES permit for the activities regulated under section 404 of the CWA. This exemption shall not relieve any person of any requirement imposed by W. Va. Code § 22-11-1, et seq., or other rules, including permit requirements.

3.2. Prohibition Against Issuing a WV/NPDES 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 11;

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

3.2.a.3. When, in the judgment of the Secretary of the United States Army Corps of Engineers, 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 subdivision 4.5.e. of this rule or has met the requirements for a variance under subdivision 4.5.f. of this rule;

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 that is an indirect discharger.

3.3. Denial of Permits. WV/NPDES permits may be denied for noncompliance with Article 11 or this rule, including the reasons specified in subsection 8.4 of this rule, or when a surface mining permit under WVSCMRA has been denied. In the case of an application for reissuance, an outstanding violation of any existing environmental permit is grounds for denial. Any denial of the WV/NPDES permit is appealable to the West Virginia Environmental Quality Board in accordance with the procedures and authority of W. Va. Code § 22-11-21.

3.4. Effect of a Permit.

3.4.a. Except for any toxic effluent standards and prohibitions imposed by CWA Section 307 for toxic pollutants injurious to human health, 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 11. However, a permit may be modified, reissued or revoked during its term for cause as set forth in Section 8 of this rule.

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 Transferability of Permits.

3.5.a. Duration. WV/NPDES permits shall be effective for a fixed term not to exceed five (5) years. The Secretary may shorten the term of a WV/NPDES permit to ensure that expiration dates of WV/NPDES permits in the same watershed coincide, but a WV/NPDES permit may not be shortened to less than three (3) years for the sole purpose of reconciling expiration dates of WV/NPDES permits, unless the permittee agrees.

3.5.b. Extension. An extension of a WV/NPDES permit may be initiated by either the permittee or the Secretary. Permits extended under subdivision 3.5.b. of this rule remain fully effective and enforceable. When a WV/NPDES permit is reissued the existing permit is automatically void.

3.5.b.1. Reissuance Extensions. Prior to the expiration date of the permit, the permittee may request an extension of its WV/NPDES permit for the purpose of compiling or processing a reissuance application. Such requests must be in writing to the Secretary and shall not be granted for more than 12 months beyond the expiration date. The request for extension shall be signed as required by subsection 4.7. of this rule. After receiving the reissuance application, the Secretary may extend any WV/NPDES permit for the purpose of ensuring coverage of a facility during processing of the reissuance.

successive extensions for periods not to exceed 12 months if he or she determines additional time is necessary in order to process the application for reissuance.

3.5.b.2. Watershed Framework Extensions. The Secretary may grant a one-time extension of a WV/NPDES permit for up to 24 months for the purpose of adjusting expiration dates to coincide with the West Virginia Watershed Management Framework initiative cycle dates of the watershed groups.

3.5.c. Transfer of Permits. Permits may be transferred from a permittee to a new operator by either modifying an existing permit pursuant to subparagraph 8.2.c.1.D. of this rule, reissuing the permit under paragraph 8.3.c.3. of this rule or by an automatic transfer under subdivision 3.5.d. of this rule. The proposed permittee shall demonstrate that he or she has accepted all necessary permit responsibilities.

3.5.c.1 The Secretary may grant advanced approval of the transfer of the WV/NPDES Permit to temporarily allow the new owner or operator to operate and discharge under the conditions of the WV/NPDES permit. Approval will be contingent upon the corresponding Article 3 approval granted under the terms and conditions specified in 38 C.S.R. 2 § 23.25.a.4.

3.5.d. Automatic Transfer of Permits. Any permit may be automatically transferred to a new permittee if:

3.5.d.1. The current permittee notifies the Secretary on the forms prescribed, at least 30 days in advance of the proposed transfer date;

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 Secretary does not notify the existing permittee and the proposed new permittee of his or her intent:

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

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

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

3.5.d.3.D. notification under paragraph 3.5.d.3. of this rule within 45 days after receipt of the current permittee's notification under paragraph 3.5.d.1. of this rule.

3.5.e. Permits Issued After July 1, 1984. A permit may be issued to expire on or after the statutory deadline set forth in CWA Sections 301(b)(2)(A), 301(b)(2)(C), and 301(b)(2)(E) (July 1, 1984) if the permit includes effluent limitations to meet the requirements of CWA Sections 301(b)(2)(A), 301(b)(2)(C), 301(b)(2)(D), 301(b)(2)(E), and 301(b)(2)(F), whether or not the applicable effluent limitations guidelines have been promulgated or approved. A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under this subdivision is not conclusive as to the discharger's inclusion in the 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 Secretary.

3.6.a. The Secretary shall issue, administer and enforce all WV/NPDES or Article 11 permits relating to coal mines, preparation plants, and all refuse and waste therefrom.

The Secretary 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 that are transferred by the Regional Administrator and accepted by the Secretary. Acceptance of a NPDES permit from the Regional Administrator shall not supersede any permit previously issued under Article 11. All provisions of both permits shall be in force, except that, in the event of a conflict, the more stringent provisions shall apply. All permits relating to the same facility shall be deemed consolidated and considered as a single permit for the purposes of reporting, administration and enforcement.

Unexpired permits previously issued under Article 11 shall be void whenever a new WV/NPDES permit is issued for the same facility. Any unexpired NPDES permit issued by the EPA shall not be enforceable by the Secretary upon the issuance of a new WV/NPDES permit for the same facility.

§47-30-4. Application For Permits.

4.1. Duty to Apply. Unless covered under a general permit issued in accordance with section 13 of this rule, any person discharging pollutants, proposing to discharge pollutants, or proposing to undertake any activity listed in subdivision 3.1.a. of this rule who does not have an effective permit for such discharge or activity shall submit a complete application in the manner and form prescribed by the Secretary and in accordance with the provisions of section 4 of this rule.

4.2. Responsible Party Applies. When a facility or activity is owned by one person but is operated by another, the operator shall be the applicant. The Secretary 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 Secretary 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 Secretary a WV/NPDES application. An application for a permit is complete when the Secretary receives an application form and any supplemental information including maps, plans, designs, and other application materials that are completed to the Secretary'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 Secretary shall not begin the processing of a permit until the applicant has fully complied with the application requirements.

4.4. Time to Apply.

4.4.a. Reissuance. Any person with an existing WV/NPDES permit shall submit an application for reissuance of that permit at least one hundred twenty (120) days before the expiration date of the existing WV/NPDES, NPDES or Article 11 permit.

4.4.b. Permit to Abandon. Any person proposing to abandon a deep mine facility under W. Va. Code § 22-11-8(b)(6) and paragraph 3.1.a.5. of this rule shall apply for an abandonment permit at least

one hundred eighty (180) days prior to sealing of the deep mine. A Phase II bond release request under WVSCMRA shall be considered an application to abandon a surface mine facility under W. Va. Code § 22-11-8(b)(6) and paragraph 3.1.a.5. of this rule.

4.5. Information Required From Applicants.

4.5.a. Information Required From All Applicants. All applicants for WV/NPDES permits shall provide the Secretary with a complete application in the manner and on a form prescribed by the Secretary. The form may require information in addition to that specified in subsection 4.5. of this rule. Additionally all applicants for WV/NPDES permits must submit a complete application for a surface mining permit under WVSCMRA. Incorporation by reference of material supplied in the WVSCMRA application is permissible in consolidated applications.

4.5.a.1. The activities conducted by the applicant that 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 that 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 the 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 including, but not limited to, the following:

4.5.a.6.A. The facility boundary and extending at least one thousand (1,000) feet beyond to include the boundary of each WVSCMRA permit (appropriately labeled) being covered by the application.

4.5.a.6.B. Any adjacent deep and strip mines and auger holes and the thickness of barriers between the proposed mine and adjacent mine or auger holes;

4.5.a.6.C. Water level and its elevation in any adjacent deep mines;

4.5.a.6.D. Proposed location of all mine seals and sectional dams if any;

4.5.a.6.E. All proposed mine portals and boreholes;

4.5.a.6.F. Surface and seam elevations of all mine openings;

4.5.a.6.G. The north line;

4.5.a.6.H. General strike and dip direction of the mineral bed and the average dip;

4.5.a.6.I. Each of its appropriately labeled monitoring, intake and discharge points;

4.5.a.6.J. Each of its hazardous waste treatment, storage or disposal facilities;

4.5.a.6.K. 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.a.6.L. The map must be notarized and certified by a registered professional engineer or professional surveyor.

4.5.a.7. Outlet and Monitoring Point Location. For each point source and monitoring point, the latitude and longitude to the nearest second, elevation, and the name of the immediate receiving/sampling water and river mile point.

4.5.a.8. 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 paragraph 4.5.a.9. of this rule. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined through historic record, the applicant may instead provide the flows used to design the treatment unit.

4.5.a.9. Average Flows and Treatment. On the line drawing or in a narrative, identify each type of process, operation or production area that contributes wastewater to the effluent for each outlet, including process wastewater and stormwater 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.a.10. Intermittent Flows. If any of the discharges described in paragraph 4.5.a.9. of this rule are intermittent or seasonal, a description of the frequency, duration, and flow rate of each discharge occurrence (except for stormwater runoff, spillage or leaks).

4.5.a.11. 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.a.12. Biological Information. An identification of any biological monitoring data that 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.a.13. Contract Analyses. If a contract laboratory or consulting firm performed any of the analyses required by paragraph 4.5.b.1. of this rule, the identity of each laboratory or firm and the analyses performed.

4.5.a.14. Plan for Abandonment. The information required in a plan for abandonment pursuant to subdivision 4.5.d. of this rule.

4.5.a.15. Discharges into Non-complying Waters. Compliance with subdivision 4.5.e. of this rule.

4.5.a.16. Existing Source Variances. Compliance with subdivisions 4.5.f. and 4.5.g. of this rule if applicable and meets the definition of "existing source".

4.5.a.17. Used or Manufactured Toxics. A listing of any toxic pollutant that the applicant does or expects to use or manufacture as an intermediate or final product or by-product. The Secretary 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 Secretary has adequate information to issue the permit.

4.5.b. Information Required For Pre-Existing Discharges and Reissuance Applications. All applicants (including all applicants for reissuance) for WV/NPDES permits whose facilities have pre-existing discharges shall also provide the following information to the Secretary:

4.5.b.1. Effluent Characteristics. Information on the discharge of pollutants specified in subparagraphs 4.5.b.1.A. through 4.5.b.1.F. of this rule. When "quantitative data" (concentration and mass) for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved by 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 24 hours, and a minimum of one (1) to four (4) grab samples may be taken for stormwater 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 (4) or more hours. In addition, the Secretary may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is unfeasible 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 Secretary 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.1.A. Mandatory Testing:

4.5.b.1.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:

4.5.b.1.A.1.(a) Biochemical Oxygen Demand (BOD-5day);

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

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

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

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

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

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

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

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

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

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

4.5.b.1.A.2. The Secretary may waive the testing and reporting requirements for any of the pollutants or flow listed in part 4.5.b.1.A.1. of this rule, if the applicant submits a request for a waiver before or with its application that demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

4.5.b.1.B. Each applicant contributing to a discharge must report quantitative data for the pollutants listed in Appendix B of this rule in each outlet.

4.5.b.1.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 subparagraph 4.5.b.1.F. of this rule) and must report for each outlet quantitative data for the following pollutants:

4.5.b.1.C.1. All pollutants listed in Appendix B or Appendix C of this rule for which quantitative data is not otherwise required under subparagraph 4.5.b.1.B. of this rule. For every pollutant listed in Appendix B or Appendix C expected to be discharged in concentrations of ten parts per billion (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 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 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 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 paragraph 4.5.b.2. of this rule is not required to analyze for pollutants listed in Appendix C of this rule.

4.5.b.1.C.2. All pollutants in Appendix D of this rule. If an applicable effluent limitations guideline either directly limits the pollutant listed in Appendix D or, by its express terms, indirectly limits the pollutant listed in Appendix D through limitations of an indicator, the applicant must report quantitative data. For every pollutant discharged that 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.1.D. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Appendix E of this rule are discharged from each outlet (see subparagraph 4.5.b.1.E. of this rule). For every pollutant listed in Appendix E that is expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any quantitative data it has for any pollutant.

4.5.b.1.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.1.E.1. The applicant 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.1.E.2. The applicant knows or has reason to believe that TCDD is or may be present in an effluent.

4.5.b.1.F The requirements in subparagraphs 4.5.b.1.C. and 4.5.b.1.D. of this rule that an applicant must provide quantitative data for certain pollutants known or believed to be present, does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

4.5.b.2. Small Business Exemption. Coal mines or preparation plants with a probable total annual production of less than one hundred thousand (100,000) tons per year per mine or plant are exempt from the requirements of part 4.5.b.1.C.1. of this rule to submit quantitative data for the pollutants listed in Appendix C of this rule.

4.5.c. Additional Information.

4.5.c.1. In addition to the information reported on the application form, applicants shall provide to the Secretary, at his or her request, other information the Secretary 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.d. Plan for Abandonment and Application to Abandon a Mine.

4.5.d.1. Deep Mines. The plan for abandonment may incorporate information contained in the surface mining permit under WVSCMRA. Unless waived in writing in whole or in part by the Secretary, an applicant for a deep mine under subdivision 4.5.b. of this rule shall provide a plan for abandonment that contains the following information:

4.5.d.1.A. A deep mine development 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) and 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 mines 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;

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

4.5.d.1.A.11. The map must be notarized and certified by a registered professional engineer or professional surveyor.

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 as stated in part 4.5.d.1.A.1. of this rule); elevation of water pools in these mines; the thickness and nature of parting between the workings; whether water from the mine to be abandoned will flow through the adjacent mines or the mines above or below; and whether water from adjacent mines or mines below or above will flow through the mine to be abandoned and, if it will, the quality of the water.

4.5.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 that the Secretary may deem necessary to evaluate the water pollution potential of the facility.

4.5.d.1.G. The information required in 38 C.S.R. 2 §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 the WVSCMRA permit shall be the plan for abandonment.

4.5.d.3. Plan for Abandonment; Reissuance. Unless waived in writing in whole or in part by the Secretary, in addition to the information required by subdivision 4.5.a. of this rule, an applicant for the reissuance of a WV/NPDES permit shall provide information to update or add to the information required in paragraphs 4.5.d.1. and 4.5.d.2. of this rule.

4.5.d.4. Application for Permit to Abandon.

4.5.d.4.A. For Deep Mines. An application for a permit to abandon shall contain the information required under paragraphs 4.5.d.1. and 4.5.d.2. of this rule, updated to show final determinations that reflect current knowledge on each item: Provided, That where the information submitted under paragraphs 4.5.d.1. and 4.5.d.2. of this rule has not significantly changed, further updating will not be required, and the following:

4.5.d.4.A.1. A statement from the applicant that 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 strata ten (10) feet below the lowest mineral bed being mined, 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 paragraph 4.5.a.6. or 4.5.d.1. of this rule; and

4.5.d.4.A.3. A report on the quality of water being discharged from the mine during the past year or, if the data is unavailable, 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 Non-complying Waters. The owner or operator of a facility proposing to discharge into a water segment that 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 either that:

4.5.e.1. There are sufficient remaining pollutant load allocations to allow for the discharge;

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. The applicant qualifies for an alternate water quality based effluent limitation by making an adequate demonstration to the Secretary pursuant to 47 C.S.R. 2.

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 paragraphs 4.5.f.1. through 4.5.f.4. of this rule 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 subsection 10.2 of this rule. The request shall explain how the requirements of 40 C.F.R. Part 125, Subpart D have been met.

4.5.f.2. Non-conventional Pollutants. A request for a variance from the best available technology (BAT) requirements for CWA Section 301(b)(2)(F) pollutants (commonly called "non-conventional" 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 EPA Region III Administrator, as well as to the Secretary, 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 be filed not later than two hundred 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 subsection 10.2. of this rule demonstrating that the applicable requirements of 40 C.F.R. Part 125 have been met, unless an extension is granted under paragraph 4.5.g.2. of this rule.

4.5.f.2.C. Requests for variance from effluent limitations not based on effluent limitation guidelines need only comply with subparagraph 4.5.f.2.B. of this rule and need not be preceded by an initial request under subparagraph 4.5.f.2.A. of this rule.

4.5.f.3. Innovative Technology. An extension under CWA Section 301(k) from the statutory deadline of July 1, 1984 under CWA Section 301(b)(2)(A) for best available technology based on the use of innovative technology may be requested no later than the close of the public comment period under subsection 10.2. of this rule for the discharger's initial permit requiring compliance with CWA Section 301(b)(2)(A). The request shall demonstrate that the requirements of 40 C.F.R. Part 124.13 and Part 125, Subpart C have been met.

4.5.f.4. Water Quality Related Effluent Limitations. 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 subsection 10.2. of this rule on the permit from which the modification is sought.

4.5.g. Expedited Variance Procedures and Time Extensions.

4.5.g.1. Notwithstanding the time requirements in subdivision 4.5.f. of this rule, the Secretary may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations that are eligible for variance. In the notice, the Secretary 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 that may become effective upon final grant of the variance.

4.5.g.2. A discharger who cannot file a complete request required under subparagraph 4.5.f.2.B. of this rule may request an extension. The extension may be granted or denied at the discretion of the Secretary. Extensions shall be no more than six (6) months in duration.

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

4.7. Signatories to Permit Applications and Reports.

4.7.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 this section, 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 fifty (250) persons or having gross annual sales or expenditures

exceeding twenty-five million dollars ($25,000,000), 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 Secretary for compliance with Article 11 shall be signed by a person described in subdivision 4.7.a. of this rule 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 subdivision 4.7.a. of this rule;

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 Secretary.

4.7.c. Changes to Authorization. If an authorization under subdivision 4.7.b. of this rule is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subdivision 4.7.b. of this rule must be submitted to the Secretary 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 subdivision 4.7.a. or 4.7.b. of this rule shall make the following certification:

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

4.7.e. The Secretary may establish a means by which documents can be signed by a person using a digital signature. When a person affixes his or her digital signature to a document, the digital signature shall have the same effect as a signature affixed to that document by other means.

§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 this rule must be given in the permit.

5.1. Duty to Comply; Penalties.

5.1.a. The permittee must comply with all conditions of a WV/NPDES permit. Permit noncompliance constitutes a violation of the CWA and Article 11 and is grounds for enforcement action, 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 11 provide that any person who violates a permit condition implementing CWA Sections 301, 302, 306, 307, 308, 318 or 405 or any provision of a WV/NPDES permit or any rule or regulation promulgated under Article 11 is subject to a civil penalty not to exceed twenty-five thousand dollars ($25,000) 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 11 or a WV/NPDES permit is subject to a fine of not less than two thousand 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 less than one thousand dollars ($1,000) nor 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 11 provide that any person who knowingly makes any false statement, representation or certification in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or noncompliance, shall, upon conviction, be punished by a fine of not less than one thousand dollars ($1,000) nor 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.

ny 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. However, as provided by subdivision 3.4.a. of this rule, except for any toxic effluent standards and prohibitions imposed under CWA Section 307 for toxic pollutants injurious to human health, 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 11.

5.1.g. Nothing in subsection 5.1. of this rule shall be construed to limit or prohibit any other authority the Secretary may have under Article 3 or Article 11 of Chapter 22 the West Virginia Code or to relieve the permittee from any responsibilities, liabilities or penalties for not complying with 47 C.S.R. 2 and 47 C.S.R. 11.

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

5.3. Duty to Halt or Reduce Activity Not a Defense. Upon reduction, loss or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with the WV/NPDES permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power to the treatment facility fails or is reduced or lost. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

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

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

5.6. Permit Actions. The WV/NPDES permit may be modified, reissued, suspended or revoked for cause (see section 8 of this rule). The filing of a request by the permittee for a permit modification, reissuance, termination or a notification of planned changes or anticipated non-compliance does not stay any permit condition.

5.7. Transfer. The WV/NPDES permit is not transferable to any person except after notice to the Secretary and by following one of the procedures listed in subdivision 3.5.c. of this rule.

5.8. Property Rights. The WV/NPDES permit does not convey any property rights of any sort or any exclusive privilege.

5.9. Duty to Provide Information. The permittee shall furnish to the Secretary, within a specified time, any information that the Secretary 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 Secretary, upon request, copies of records required to be kept by the permit.

5.10. Inspection and Entry. The permittee shall allow the Secretary or the Secretary's 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, any substances or parameters at any location for the purposes of assuring permit compliance or as otherwise authorized by Article 11.

5.11. Monitoring and 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 Secretary 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 Secretary, unless requested, but should be retained in accordance with subdivision 5.11.c. of this rule.

5.11.e. Monitoring results shall be reported on DMRs and at the intervals specified in the permit. DMRs 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 that require averaging of measurements shall utilize an arithmetic mean, unless otherwise specified by the Secretary in the permit.

5.12. Signatory Requirement. All applications, reports or information submitted to the Secretary shall be signed and certified as required in subsection 4.7. of this rule.

5.13. Reporting Requirements.

5.13.a. Planned Changes. The permittee shall give notice to the Secretary as soon as possible but no later than thirty (30) days prior to any planned physical alterations or additions to the permitted facility or any planned changes in the method of operating the facility that may affect the nature of quantity of the discharge or qualify that facility for designation as a new source under subsection 2.32. of this rule.

5.13.b. Anticipated Noncompliance. The permittee shall give advance notice to the Secretary of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

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

5.13.d. Immediate Reporting.

5.13.d.1. The permittee shall report any noncompliance with the WV/NPDES permit or Article 11 that may endanger public health or the environment immediately, but not later than twenty-four (24) hours after becoming aware of the circumstances by using the Department of Environmental Protection's Emergency Notification Number 1-800-642-3074. 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; 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 subdivision 5.14.a. of this rule) that exceeds any effluent limitation in the permit;

5.13.d.2.B. Any spill or accidental discharge (upset), as defined in subsection 5.15. of this rule, shall be reported by using the Department of Environmental Protection's Emergency Notification Number: 1-800-642-3074. The notification shall set forth the time and place of the 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 the 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 that the Secretary has required in the permit to be reported immediately.

5.13.d.3. The Secretary may waive the written report required by paragraph 5.13.d.2. of this rule 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 Secretary in writing as soon as it knows or has reason to believe:

5.13.d.4.A. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that 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 µg/l);

5.13.d.4.A.2. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/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 paragraph 4.5.b.1. of this rule; and

5.13.d.4.A.4. The level established by the Secretary in accordance with subdivision 6.2.h. of this rule.

5.13.d.4.B. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that 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 micrograms per liter (500 µg/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 paragraph 4.5.b.1. of this rule; or

5.13.d.4.B.4. The level established by the Secretary in accordance with subdivision 6.2.h. of this rule.

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 that was not reported in the permit application under paragraph 4.5.a.17. of this rule.

5.13.e. Other Noncompliance. The permittee shall report all instances of noncompliance not reported under subdivisions 5.11.e., 5.11.f., 5.11.g., 5.13.c., and 5.13.d. of these rules at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph 5.13.d.1. of this rule.

5.13.f. Net Limitations. If net limitations are established, then the permittee shall notify the Secretary if eligibility for such limitations has been altered or no longer exists.

5.13.g. Other Information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Secretary, 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.

5.14.a.2. "Severe Property Damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable or substantial and permanent loss of natural resources that 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 Not Exceeding Limitations. The permittee may allow any bypass to occur, for reasons other than sediment control, that 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 subdivisions 5.14.c. and 5.14.d. of this rule.

5.14.c. Notice.

5.14.c.1. Anticipated Bypass. If the permittee knows in advance of the need for a bypass, he or she shall submit prior written notice, if possible, at least ten (10) days before the date of the bypass.

5.14.c.2. Unanticipated Bypass. If the permittee does not know in advance of the need for a bypass, notice shall be submitted as required in subdivision 5.13.d. of this rule.

5.14.d. Prohibition of Bypass Exceeding Limitations.

5.14.d.1. Bypass exceeding limitations is permitted only under the following conditions, and the Secretary 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 that occurred during normal periods of equipment downtime or preventive maintenance; and

5.14.d.1.C. The permittee submitted notices as required under subdivision 5.14.c. of this rule.

5.14.e. Approval of Bypass Exceeding Limitations. The Secretary may approve an anticipated bypass exceeding limitations, after considering its adverse effects, if the Secretary determines that it will meet the three conditions listed in paragraph 5.14.d.1. of this rule.

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 Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of subdivision 5.15.c. of these 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 Necessary for a Demonstration of Upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

5.15.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 subparagraph 5.13.d.2.B. of this rule; and

5.15.c.4. The permittee complied with any remedial measures required under subsection 5.4. of this rule.

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

5.16. Reopener Clause. In accordance with W. Va. Code § 22-11-20, the Secretary 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 § 22-11-11(b) (Water Quality Based Effluent Limitations and Standards), CWA Section 301(b)(2)(D) (Toxics), CWA Section 304(b)(2) (Best Available Treatment) and CWA Section 307(a)(2) (Toxics), which is promulgated or approved after the WV/NPDES permit is issued, if that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit.

5.17. Removed Substances. Where removed substances are not otherwise covered by the terms and conditions of the WV/NPDES permit or other existing permit issued by the Department, any solids, sludges, filter backwash or other pollutants removed in the course of treatment or control of wastewaters that 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. 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 in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, the intended place of disposal or use, as appropriate, and shall take reasonable measures to ensure that the use does not cause pollution of the waters of the State.

5.18. New Sources.

5.18.a. The owner or operator of a new source or a recommencing discharger shall install, have in operating condition, and "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. Notwithstanding section 8 of this rule, any new source classified as such under previous EPA regulations may 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 subdivision 12.2.a. of this rule shall apply. After expiration of such protection period, the permittee must immediately comply with any more stringent technology-based limitations promulgated under CWA Section 301. If, however, the more stringent technology-based limitations are promulgated less than three (3) years before the expiration of the WV/NPDES permit, the permittee has three (3) years from the date of their promulgation to comply with the stricter limits.

5.19. Definitions. When used in WV/NPDES permits, the definitions in section 2 of this rule 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 Secretary 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 the CWA, Article 11, and section 6 of this rule.

6.1.a. An applicable requirement is a State or federal or interstate compact, statutory or regulatory requirement that takes effect prior to final administrative disposition of a permit, or it is any requirement that takes effect prior to final administrative disposition and is also any requirement that takes effect prior to the modification or reissuance of a permit. Subdivision 10.2.b. of this rule provides a means for reopening a WV/NPDES permit proceeding at the discretion of the Secretary where new requirements become effective during the permitting process. An applicable requirement is also any requirement that takes effect prior to a modification or reissuance of a permit.

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

6.2.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 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 this rule (Protection Period).

6.2.b. Other Effluent Limitations and Standards under CWA Sections 301, 302, 303, 307, and 318. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA Section 307(a) for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Secretary shall institute proceedings under this rule to modify or reissue the permit to conform to the toxic effluent standard or prohibition.

6.2.c. Water Quality Standards. Any more stringent requirements necessary to achieve water quality standards established pursuant to CWA or Article 11 or rules promulgated thereunder, including requirements of other affected states. Nothing in this subdivision precludes the application of Real Time Water Quality Control in achieving water quality standards. In the permit review and planning process, or upon the request of a permit applicant or permittee, the Secretary may utilize Real Time Water Quality Control on a case-by-case basis when establishing permit conditions when the applicant demonstrates that

the use of Real Time Water Quality Control will not violate water quality standards. In order to facilitate a determination or assessment of the applicability of Real Time Water Quality Control, the Secretary may require a permit applicant or permittee to submit such information as deemed necessary.

6.2.d. Effluent Limitations for Coal Remining Operations.

6.2.d.1. An operator shall be eligible for the effluent limitations under this subdivision if the operator has not caused or contributed to the pollutional discharges associated with the coal remining operation.

6.2.d.2. Technology-based effluent limitations. In the case of coal remining operations, the Secretary shall include the provisions of 40 CFR Part 434, Subpart G in a WV/NPDES permit to satisfy the requirements of subdivision 6.2.a.

6.2.d.3. Water quality-based effluent limitations. In the case of coal remining operations, where water quality standards under 47 C.S.R. 2 require more stringent limitations than those established under paragraph 6.2.d.2. or address parameters not included in 40 C.F.R. Part 434, Subpart G, the Secretary may grant a remining variance for any parameter of concern. A remining variance shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, and shall not be issued unless the applicant demonstrates that the remining operation will result in the potential for improved in-stream water quality as a result of the remining operation. The variance shall be issued in accordance with the Secretary's procedural rule at 47 C.S.R. 6.

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

6.2.f. Water Quality Management Plans. Any requirements necessary to ensure consistency with the requirements of a water quality management plan approved by EPA under CWA Section 208(b).

6.2.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 subdivision 4.5.f. of this rule).

6.2.h. Toxic pollutants limitations established under subdivisions 6.2.a., 6.2.b., or 6.2.c. of this rule to control pollutants meeting the criteria listed in paragraph 6.2.h.1. of this rule. Limitations will be established in accordance with paragraph 6.2.h.2. of this rule. An explanation of the development of these limitations shall be included in the fact sheet, if required.

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

6.2.h.1.A. The Secretary determines, based on information reported in a permit application under paragraphs 4.5.b.1. and 4.5.a.17. of this rule or in a notification under paragraph 5.13.d.4. of this rule or on other information are or may be discharged at a level greater than the level that 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 paragraph 6.2.h.1. of this rule will be satisfied by:

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

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

6.2.i. Notification Level. A "notification level" that exceeds the notification level of paragraph 5.13.d.4. of this rule, upon a petition from the permittee or on the Secretary's initiative. This new notification level may not exceed the level that 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 subparagraph 5.13.d.2.C. of this rule shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or a pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

6.2.k. Monitoring Requirements. In addition to the requirements of subsection 5.11. of this rule, 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 that 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 paragraph 6.2.k.4. of this rule. Reporting shall be no less frequent than specified in the paragraph 6.2.k.5. of this rule; 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 subsection 7.8. of this rule; pollutants in intake water for net limitations under subsection 7.7. of this rule; frequency rate of discharge for noncontinuous dischargers under subsection 7.4. of this rule; and pollutants subject to notification requirements under paragraph 5.13.d.4. of this rule.

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.l.1. Authorized under CWA Section 304(e) for the control of toxic pollutants and hazardous substances from ancillary activities;

6.2.l.2. Numeric effluent limitations are unfeasible; or

6.2.l.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 Permits.

6.2.m.1. When a permit is reissued, interim limitations, standards or conditions shall be set that 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, this paragraph 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 that 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 of the United States Army (Corps of Engineers) considers necessary to ensure that navigation and anchorage will not be substantially impaired.

6.2.o. Schedules of Compliance. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA, Article 11, and rules promulgated thereunder.

6.2.o.1. Any schedule of compliance shall require compliance as soon as possible, but in no case later than the applicable statutory deadline. In the case of permit conditions based on water quality standards established after July 1, 1977, a schedule of compliance may be used that shall assure that the discharge will not cause a violation of applicable water quality standards.

6.2.o.2. The first WV/NPDES permit issued to a new source or a new discharger 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 Dates. If a permit establishes a schedule of compliance that 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. Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities rather than continue to operate and meet permit requirements as follows:

6.2.o.5.A. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit that has already been issued

he permit may be modified to contain a new or additional schedule leading to timely cessation of activities or the permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

6.2.o.6. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination that will ensure timely compliance with applicable requirements for compliance not later than statutory deadline.

6.2.o.7. If the permittee is undecided whether to cease conducting regulated activities, the Secretary may issue or modify a permit to contain two (2) schedules as follows:

6.2.o.7.A. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirement in a timely manner if the decision is to continue conducting regulated activities;

6.2.o.7.B. One (1) schedule shall lead to timely compliance with applicable requirements and compliance no later than the statutory deadline;

6.2.o.7.C. The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements or compliance no later than the statutory deadline; and

6.2.o.7.D. Each permit containing two (2) schedules shall include a requirement that, after the permittee has made a final decision under subparagraph 6.2.o.7.A., it shall follow the schedule leading to compliance if the decision is to cease conducting regulated activities.

6.2.o.8. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Secretary.

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

7.1. Outlets and Discharge Points. All permit effluent limitations, standards, and prohibitions shall be established for each outlet or discharge point of the permitted facility, except as otherwise provided under paragraph 6.3.k.2. and subsection 7.8. of this rule. Where a person has a number of outlets emerging into the waters of this State in close proximity to one another, such outlets may be treated as a unit for the purposes of section 7 of this rule.

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

7.2.a. An applicable effluent standard or limitation has been promulgated under the 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 the CWA; or

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

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

7.4. Noncontinuous Discharges. Discharges that 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 Water. Except as provided in subsection 7.7. of this rule, 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 Secretary may waive this requirement if he or she finds that no environmental degradation will result.

7.7.e. The provisions of subsection 7.7. of this rule do not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

7.8. Internal Waste Streams.

7.8.a. When permit effluent limitations or standards imposed at the point of discharge are impractical or unfeasible, 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 subsection 5.11. of this rule 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 this rule sets forth the exceptional circumstances that make such limitations necessary, such as when the final discharge point is inaccessible (for example, a point that is beneath ten (10) meters of water), the wastes at the point of discharge are so diluted as to make monitoring impractical, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

7.9. Disposal of Pollutants into Wells or Underground Mines or by Land Application.

7.9.a. Calculations of Effluent Limitations (General). When part of a discharger's process wastewater is not being discharged into surface waters of the State because it is disposed into a well, underground mine or by land application thereby reducing the flow or level of pollutants being discharged into surface waters of the State, the Secretary 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 Effluent Limitations (Specified). The provisions of subdivision 7.9.a. of this rule shall not apply to the extent that promulgated effluent limitations guidelines specify a different specific technique for adjusting effluent limitations to account for well injection underground, mine disposal or land application.

7.9.c. The provisions of subdivision 7.9.a. of this rule do not alter a discharger's obligation to meet any more stringent requirements established under sections 5 or 6 of this rule.

§47-30-8. Modification, Reissuance, Suspension, Release, and Revocation of Permits.

8.1. General.

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

8.1.b. If the Secretary 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, release 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 Secretary, citing facts or reasons supporting the request for modification and indicating under which section of this rule the request is made. The Secretary 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 Secretary tentatively decides to modify a permit and the modification is made under paragraph 8.2.c.2. of this rule, he or she shall prepare a draft permit under subsection 10.1. of this rule, follow the public notice procedures in subsection 10.2. of this rule, and follow the procedural requirements in W. Va. Code § 22-11-12. The draft permit shall fulfill the requirement of notice under W. Va. Code § 22-11-12. When a draft permit is prepared for the modification, only those conditions to be modified shall be reopened when a new draft permit is prepared.

8.2.c. Causes for Modification.

8.2.c.1. Minor Modifications. Upon the consent of the permittee, the Secretary may modify a permit to make the corrections or allowances for changes in the permitted activity listed in subparagraphs 8.2.c.1.A .through 8.2.c.1.J. of this rule without preparing a draft permit under subsection 10.1. of this rule or following the procedures of section s 10 or 11 of this rule or the procedures in W. Va. Code § 22-11-12. Minor modifications may:

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

8.2.c.1.B. Require more or less 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 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 Secretary determines that no other change in the permit is necessary: Provided, That any forms prescribed by the Secretary, 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 Secretary;

8.2.c.1.E. Change the construction schedule for a discharger that 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.2. Major Modifications. The following are causes for major modification, but not reissuance of a permit, unless the permittee requests or agrees, and require the preparation of a draft permit under subsection 10.1. of this rule and the public notice procedures of subsection 10.2. of this rule. If the permittee requests or agrees, then the following causes can be reason for a permit reissuance that 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 that occurred after permit issuance that 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. Section 122.29 and Part 434 to be applicable. *See also* subsection 2.31 and section 12 of this rule.

8.2.c.2.B. Information. The Secretary 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 Rules or Judicial Decision. The standards or rules on which the permit was based have been changed by promulgation of amended standards or rules 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 rules, 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 standard;

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 rules or if the remand and stay concern that portion of the rules 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 Schedules. The Secretary 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 paragraph 4.5.f.1. of this rule.

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 subdivision 6.2.d. of this rule.

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 subsection 7.7 of this rule.

8.2.c.2.I. Nonlimited Pollutants. When the level of discharge of any pollutant that is not limited in the permit exceeds the level that 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 that was not reported in the permit application.

8.2.c.2.K. Notification Levels. To establish a "notification level" as provided in paragraph 5.13.d.4. of this rule.

8.2.c.2.L. Failure to Notify Affected State. Upon failure of the Secretary to notify another state, as required by subdivision 10.2.d. of this rule, whose waters may be affected by a discharge from this State and different permit conditions are required to comply with the other state's 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 Meet BPJ Limits. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under CWA Section 402(a)(1) and has properly operated and maintained the facilities, but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved but shall not be less stringent than required by a subsequently promulgated effluent guideline.

8.2.c.2.O. BPJ Limits Too Costly. When the permittee's effluent limitations were imposed under CWA Section 402(a)(1) and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline, but in no case may the limitation be less stringent than the subsequent guideline.

8.3. Reissuance.

8.3.a. General.

8.3.a.1. The Secretary may reissue WV/NPDES permits prior to their expiration date for any cause specified in subsection 8.3. of this rule. When a permit is to be reissued, the entire permit is reopened, and the Secretary shall require submission of a permit reissuance 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 subsection 10.1. of this rule and the public notice procedures of subsection 10.2. of this rule. 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 paragraph 8.2.c.2. of this rule.

8.3.b.2. The WV/NPDES permit will expire within eighteen (18) months, and the permittee has submitted an application for reissuance that 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, release or revocation of the WV/NPDES permit under subsection 8.4. of this rule, and the Secretary determines reissuance is appropriate;

. Conditions exist that allow reopening and reissuance of the permit under subsection 5.16. of this rule.

8.4. Suspension, Release and Revocation of Permits. Permits may be suspended, released or revoked in whole or in part. 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 11;

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;

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;

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 as defined in 47 C.S.R. 10 § 2.42 (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 Major 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 EPA Region III 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 Secretary 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 subsection 9.2. of this rule.

9.2. Special Requirements for Major Facilities.

9.2.a. All facilities designated as major facilities by the Region III Administrator in conjunction with the Secretary:

9.2.a.1. Will have a fact sheet prepared on them pursuant to section 11 of this rule 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 subsection 5.11 of this rule to both the Secretary and the Region III 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 Secretary will be subject to an annual inspection under paragraph 9.2.a.3. of this rule.

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

10.1. General.

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

10.1.b. If the Secretary 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 this rule;

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 this rule that are to be included.

10.1.c. All draft permits shall be accompanied by a fact sheet if required under section 11 of this rule and shall be publicly noticed and available for public comment in accordance with subsection 10.2. of this rule.

10.2. Public Notice, Comment, and Hearings.

10.2.a. Public 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 subsection 10.3. of this rule.

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 Public Comment Period. If any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Secretary may reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted. The Secretary 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 provided in subparagraph 10.2.a.2.A. of this rule, the applicant shall send the Secretary a copy of the advertisement and proof of publishing, along with an affidavit certifying that the notice and a fact sheet, if required, were sent to all persons listed in subparagraphs 10.2.d.1.A. and 10.2.d.1.B. of this rule. A WV/NPDES permit may not be issued until that affidavit is received.

10.2.d. Methods. In addition to the requirements of subdivision 10.2.c. of this rule, 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 Wildlife Resources Section of the West Virginia Division of Natural Resources; United States Army Corps of Engineers; the Historic Preservation Unit of the West Virginia Department of Culture and History; the Advisory Council on Historic Preservation; and other appropriate government authorities, including any affected states.

10.2.d.1.B. Any other State or Federal agency that the Secretary 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 of Water and Waste Management and the Division of Air Quality of the West Virginia Department of Environmental Protection;

10.2.d.1.B.2. For UIC: The Division of Water and Waste Management of the West Virginia Department 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 Division of Air Quality of the West Virginia Department of Environmental Protection.

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 paragraph 10.2.d.1. of this rule may waive his rights to receive notice for any classes and categories of permits.

10.2.d.2. The Secretary 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 subdivision 10.2.e. of this rule, all persons identified in subparagraphs 10.2.d.1.A. and 10.2.d.1.B. of this rule shall be mailed a copy of the fact sheet, if any, and the draft permit and application unless the person requests, in writing, that these documents not be sent.

10.2.e. Contents.

10.2.e.1. All Public Notices. All public notices issued under subsection 10.2. of this rule 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 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 (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

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 by the Secretary.

10.2.e.2. Public Notices for Hearings. In addition to the general public notice requirements of paragraph 10.2.e.1. of this rule, 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 Comments and Requests for Public Hearings. During the public comment period provided in subdivision 10.2.a. of this rule, any interested person may submit written comments on the draft permit and may request a public hearing, if a public hearing has not been already scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subsection 10.4. of this rule.

10.3. Public Hearings.

10.3.a. A public hearing shall be held whenever the Secretary finds, on the basis of requests, a significant degree of public interest on issues relevant to the draft permit(s). The Secretary also may hold a public hearing at his or her 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 subparagraph 10.2.a.2.A. of this rule shall automatically be extended to the close of any public hearing held under the provisions of subsection 10.3. of this rule.

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 Comments.

10.4.a. At the time that any final permit is issued, the Secretary 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 Comment by Government Agencies.

10.5.a. If during the comment period for a draft permit, the District Engineer of the United States Army Corps of Engineers advises the Secretary 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 Secretary that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Secretary shall include the specified conditions in the permit. Review or appeal of denial of a permit under section 10 of this rule or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers and may not be made under the provisions of this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be stayed in the WV/NPDES permit for the duration of that stay.

10.5.b. If during the comment period, any other State or federal agency with jurisdiction over fish, wildlife or public health advises the Secretary 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 Secretary may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the CWA and Article 11.

10.5.c. In appropriate cases the Secretary may consult with one or more of the agencies referred to in section 10 of this rule before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.

10.6. Public Access to Information. Public access to information shall be governed by West Virginia's Freedom of Information Act, W. Va. Code § 29B-1-1, et seq.

§47-30-11. Fact Sheet.

11.1. Fact Sheet Preparation. 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;

11.1.d. Every draft permit that the Secretary finds is the subject of 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 Secretary shall send this fact sheet to the applicant and, on request, to any other person.

11.2. Fact Sheet Contents. The fact sheet shall include, when applicable:

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

11.2.b. The type and quantity of wastes, fluids or pollutants that 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 subsection 10.2. of this rule 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 subdivision 6.2.g. of this rule;

11.2.h.2. Limitations on internal waste streams under subsection 7.8. of this rule;

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

11.2.h.4. Limitations set on a case-by-case basis under 40 C.F.R. Section 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 this rule:

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 that form a permanent part of the new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to

construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

12.2. Effect of Compliance with New Source Performance Standards.

12.2.a. Except as provided in subdivision 12.2.b. of this rule, any new source that 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;

12.2.a.2. Ten (10) years from the date the source begins to discharge process or other non-construction 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 subdivision 12.2.c. of this rule does not apply to:

12.2.b.1. Additional or more stringent permit conditions that are not technology-based (for example, conditions based on water quality standards or toxic effluent standards or prohibitions under CWA Section 307(a));

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 that 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 that modify their pollution control facilities and achieve performance standards but that are not new sources or otherwise do not meet the requirements of this section.

12.2.c. When a WV/NPDES permit is issued to a source with a "protection period" under subdivision 12.2.a. of this rule that 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, have in operating condition, and "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 paragraph 6.2.n.2. of this rule.

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 New Source 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 of this rule, and:

12.3.a.1. It is constructed at a site at which no other source is located;

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 Secretary 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 paragraph 12.3.a.3. of this rule 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 paragraph 8.2.c.2. of this rule, rather than in a new source, if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs 12.3.a.2. or 12.3.a.3. of this rule but otherwise alters, replaces or adds to existing process or production equipment.

12.3.d. Construction of a new source as defined in section 2 of this rule 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 that 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 within a reasonable time. Options to purchase or contracts that 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 this rule, apply to have its WV/NPDES permit modified to incorporate the revised new source performance standards.

§47-30-13. General Permits.

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

13.1.a. Area. The general permit may be written to cover a category of discharges described in the permit under subdivision 13.1.b. of this rule, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

13.1.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 United States 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 subdivision 13.1.a. of this rule, 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 Secretary, are more appropriately controlled under a general permit than under individual permits.

13.1.c. If the Secretary tentatively decides to issue a general permit, he or she shall prepare a draft general permit under subdivision 10.1.a. of this rule.

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 this rule for either individual dischargers or for a category of point sources.

13.2.b. Requiring an Individual Permit. The Secretary 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 Secretary to take action under subsection 13.2. of this rule. 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 subsection 13.1. of this rule are not met.

§47-30-14. Decision On Variance.

14.1. Actions by the Secretary.

14.1.a. The Secretary 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 Secretary may deny, 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 Secretary may deny or forward to the Administrator (or his or her delegate) with a written concurrence or submit to the Administrator (or his or her 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 subdivision 14.2.b. of this rule that is forwarded by the Secretary.

14.2.b. The EPA Deputy Assistant Administrator for Water Enforcement may approve or deny any variance request submitted under subdivision 14.2.a. of this rule. If the Deputy Assistant Administrator approves the variance, the Secretary 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. Section 124.64.

14.2.c. The Administrator (or his or her delegate) may grant or deny a request for a variance listed in subdivision 14.1.c. of this rule that is forwarded by the Secretary. If the Administrator (or his or her delegate) approves the variance, the Secretary 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. Section 124.64.

§47-30-15. Enforcement.

15.1. General. The provisions of this rule may be enforced by all of the applicable provisions in W. Va. Code § 22-11-3, including:

15.1.a. Orders or notices issued by the Secretary in accordance with W. Va. Code §§ 22-11-11, 12, 15 and 19;

15.1.b. Civil penalties appropriate to the violation and injunctive relief in accordance with W. Va. Code § 22-11-22; and

15.1.c. Criminal penalties in accordance with W. Va. Code § 22-11-24.

15.2. Citizen Participation. The Secretary 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 11 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 11 or consent order issued by the 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 Secretary shall consider all comments received during the thirty-day period.

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

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 dephenyl ethers

38. Halomethanes:
Methylene chloride
Methylchloride
Methylbromide
Bromoform
Dichlorobromomethane
Trichlorofluoromethane
Dichlorodifluoromethane

APPENDIX A (continued)
Toxic Pollutants under CWA Section 307(a)

39. Heptachlor and metabolines

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)

55. Polynuclear aromatic hydrocarbons:
Benzanthracenes
Benzopyrenes
Benzofluoranthene
Chrysenes
Dibenzathracenes
Indenopyrenes

56. Selenium and compounds

57. Silver and compounts

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

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

APPENDIX C

Organic 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

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

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

APPENDIX C (continued)

Organic Toxic Pollutants

- Bases/Neutral -

1B. Acenaphthene

2B. Acenaphythylene

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-Chloronphthalene

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

39B. Naphthalene

40B. Nitrobenzene

41B. **N**-nitrosodimethylamine

42B. N-nitrosid-n-propylamine

43B. N-nitrosodiphenylamine

44B. Phenanthrene

45B. Pyrene

46B. 1,2,4-Trichlorobenzene

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

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

Guthion

Isoprene

Isopropanolamine dodecylbenzenesulfonate

Kelthane

Kepone

Malthion

Mercaptodimethur

Methoxychlor

Methyl mercaptan

Methyl methacrylate

Methyl parathion

Mevinphos

APPENDIX E (continued)

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

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

Vinyl acetate

Xylene

Xylenol

Zirconium