

38 CSR 2

WEST VIRGINIA SURFACE MINING RECLAMATION RULE RESPONSE TO COMMENTS OF THE 2018 PROPOSED RULE CHANGE

On June 16, 2017, the Division of Mining & Reclamation (DMR) commenced a thirty-day public comment period and subsequently held a public hearing on July 18, 2017 to accept oral comments on proposed revisions to legislative rule 38 CSR 2. Written comments were also accepted through the close of the hearing on Wednesday, July 18, 2017. Below, DMR is addressing all comments received.

A. 38 CSR 2 § 2.37. Deletion of the definition of “Completion of Reclamation”

There is no federal counterpart for this definition. In addition, the phrase is used throughout the 38 CSR 2 and has different requirements and/or meaning depending on what the section or activity being described. This change will not impact compliance with the State water quality law and/or rules

Therefore, to prevent confusion the definition is being removed.

B. 38 CSR 2 §6. Blasting

This proposal consolidates all the blasting requirements under 38CSR2; deletes certain sections that have no federal counterpart; modifies certain sections to be analogous to their federal counterpart and to be consistent with the recent changes in the code HB 4726 (2016 Regular Legislative Session) and SB 687 (2017 Regular Legislative Session). The amendment modifies §38-2-6 (Blasting) and create new sections 38-2-25 thru 27 (Certification of Blasters; Blasting Damage Claim and Arbitration for Blasting Damage Claims and Explosive Material Fee, respectively).

It also modifies the notification requirements for preblast surveys to be consistent with change made in §22-3-13a. (Preblast survey requirements by SB 687 (2017 Regular Legislative Session) which among other changes removed the seven tenth of a mile for preblast surveys.

All Coal Mining Inspectors are required to take and pass Examination for Certified Blaster and are continually provided refresher courses in blasting as well as other areas.

Once the requirements have been consolidated, 199CSR1, Surface Blasting Rule, can be rescinded (HB 4726)

C. 38 CSR 2 § 11.3.f

There is no proposed change to this section. The deletion contained in 11.3.f.9 was in error and will be corrected. This section was added in 2012 to allow for a bond to guarantee treatment of long-term, post-mining water discharges from coal permits. In addition to the bonds currently allowed by law, either a trust fund or an annuity could be furnished to guarantee post-mining water treatment.

D. 38 CSR 2 §11.4 Incremental Bonding

To match the language of the code as modified by SB 687 (2017 Regular Legislative Session) and to be to be analogous to its federal counterpart.

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E. 38 CSR 2 § 12.2 Requirement to Release Bond

To match the language of the code as modified by SB 687 (2017 Regular Legislative Session) and is akin to its federal counterpart. SB 687 made numerous changes to §22-3-23 one was removing the phrase “Two years after the last augmented seeding “. As proposed §38-2-12.2 mirrors its federal counterpart except for 38 CSR 2 12.2.a.4 (previously 38 CSR 12.2.e). The federal regulations do not contain the requirement of 38 CSR 2 12.2.a.4. The purpose of 38 CSR 2 12.2.a.4 (previously 38 CSR 12.2.e) was to provide a mechanism for termination of jurisdiction under the State mining program once continuing financial assurance have been established (30 CFR § 700.11D.) The termination of jurisdiction under the State mining program does not a permittee's responsibility to comply with their NPDES permits nor does it prevent enforcement by the agency under the Clean Water Act and West Virginia Water Pollution Control Act

This change will not impact compliance with the State water quality law and/or rules. There is no change in the performance standards for releases.

F. 38 CSR 2 §12.4 Forfeiture of Bond

As proposed §38-2-12.4 mirrors its federal counterpart 30 CFR § 800.50. Since it mirrors its federal counterpart it meets the requirement to be as stringent as 30 CFR § 800.50. This change will not impact compliance with the State water quality law and/or rules.

G. 38 CSR 2 § 12.5 Water Quality Enhancement

Changes to Code regarding The Special reclamation fund and the creation or the special reclamation advisory council renders this section obsolete. In addition, there is no federal counterpart to it.

H. 38 CSR 2 § 14.5.b Effluent Limitations

As proposed and noted by the comments §38-2-14.5. b mirrors its federal counterpart 30 CFR § 816.42. Since it mirrors its federal counterpart it meets the requirement to be as stringent as 30 CFR § 816.42. This change will not impact compliance with the State water quality law and/or rules.

I. 38 CSR 2 § 17 The Small Operator Assistant Program

There is no proposed change to this section. Note, there has not been any federal funding for the program for over 10 years.

J. Compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations

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These changes will not impact compliance with the State water quality law and/or rules. It will not affect the effluent limitations since the changes are limited to 38 CSR 2. There are no changes to any State Water quality laws and/or rule or effluent limitations by this proposal.

K. Does not fully address SB 619.

The purpose of these amendments is to address HB 4726 (2016 Regular Legislative Session) and SB 687 (2017 Regular Legislative Session). Senate Bill 619, directs agencies to review their respective regulations, guidelines, policies, and recommendations to determine whether they are more stringent than their federal counterparts. Each agency must submit a report to the Legislature by November 1, 2017, identifying rules that are more stringent than the federal counterpart.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE:

38-CSR-2

HELD JULY 18, 2017
DEP
601 - 57TH STREET
CHARLESTON, WEST VIRGINIA

6:10 P.M.

Donna H. Miller
Court Reporter

CAPITOL CITY REPORTING
"PROFESSIONAL STENOMASK FOR THE RECORD"

A P P E A R A N C E S

ON BEHALF OF THE DEP:

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CHARLIE STUREY

CAROL ANDERSON

P R O C E E D I N G S

1 MR. GLANCE: Good evening. I'm Jacob
2 Glance from the Department of Environmental
3 Protection's Public Information Office. Welcome to
4 tonight's public hearing on 38CSR2.

5 Also here this evening are Charlie
6 Sturey and Carol Anderson, also with the West
7 Virginia DEP.

8 The purpose of tonight's hearing is to
9 give you the opportunity to share your comments with
10 the DEP about 38CSR2.

11 Tonight's hearing is being recorded by
12 a court reporter so that the comments shared can be
13 part of the rulemaking record.

14 To ensure that we successfully achieve
15 the purpose of this meeting, we ask that everyone is
16 respectful and considerate of each other by
17 refraining from interrupting others while they are
18 speaking and keeping your comments on topic so that
19 our time is used efficiently.

20 We have six speakers signed up to
21 speak, so I think the time limit for each speaker
22 will be five minutes.

23 For those wishing to speak, when I call

1 you up to provide your comments, please state your
2 name and say if you are representing any groups or
3 organizations.

4 If you have written comments that you
5 would like to submit, in addition to your spoken
6 comments, hand them to me after you speak or at the
7 conclusion of this hearing.

8 If no one has any questions about the
9 format, we will begin the hearing with our first
10 speaker. Our first speaker is Jason Bostic. After
11 Jason is Chad Cordell.

12 MR. JASON BOSTIC: Thank you, Jake. Good
13 evening. My name is Jason Bostic, and I am the vice
14 president of the West Virginia Coal Association, and
15 thank you for the opportunity to speak on the
16 agency's proposed revisions to the State's Mining
17 and Reclamation Rules.

18 In addition to my comments tonight, the
19 Association has already filed detailed written
20 comments on the proposed revision.

21 At the outset, I think it's appropriate
22 to commend the staff of the Division of Mining and
23 Reclamation for their efforts to revive the State's
24 administrative rules for coal mining as mandated by

1 the legislature with the passage of three separate
2 bills, the most recent legislation being enacted in
3 March of this year.

4 The rule changes proposed by the agency
5 may be the most extensive rulemaking on these
6 provisions since the State originally attained
7 primacy in 1981. Obviously, this was no easy
8 undertaking and the staff of the Division of Mining
9 and Reclamation is to be complemented for completing
10 their revisions in time for consideration by the
11 legislature in the 2018 session.

12 As we discuss in more detail in our
13 written comments, these changes are certainly
14 welcome and they do bring the State's program closer
15 to providing the stability and predictability sought
16 by the legislature. But as we note in more detail
17 in our written comments, they simply do not go far
18 enough.

19 Several key provisions that exceed the
20 corresponding federal requirements under the surface
21 mining control reclamation act or the clean water
22 act remain codified in the State's rules under the
23 current proposal.

24 We believe this is contrary to the

1 intent of the legislature as expressed in Senate
2 Bill 687.

3 More importantly, these provisions also
4 maintain language and requirements that have over
5 the years allowed the interpretation and
6 implementation of the State's mining regulatory
7 program to be hijacked by adverse federal
8 administrations, activists groups and activist
9 judges, which work them to their liking to achieve a
10 political end as it regards coal production in the
11 mountain state. As a result, West Virginia has
12 regulatory requirements that exceed those of the
13 federal government and impose requirements that do
14 not exist anywhere else in the country for coal
15 mining or for any other industrial activity.

16 The Association believes these
17 provisions identified specifically in our written
18 comments must be removed from the State program to
19 stabilize it for the sake of the thousands of West
20 Virginians that work in the coal mining industry,
21 and to keep control of the State's program exactly
22 where it belongs, with the West Virginia Department
23 of Environmental Protection and the West Virginia
24 Legislature.

1 Importantly, the changes made by the
2 Agency and the additional revisions we believe are
3 necessary to the rule, will not reduce environmental
4 protection, but actually increase it by assuring
5 that both the Surface Mining Act and the Clean Water
6 Act are implemented and enforced as intended instead
7 of one program in favor of another.

8 Thank you.

9 MR. GLANCE: Chad Cordell, and after Chad
10 is Bill Price.

11 MR. CHAD CORDELL: Thank you. I will be
12 submitting written comments at the end of the
13 hearing tonight, but I want to bring up one point in
14 particular that I think needs some extra scrutiny.

15 There are two places in these proposed
16 changes where the two-year essentially vegetative
17 waiting period for Phase II bond release is being
18 removed from the regs. I would just like to go
19 ahead and read from my comments that I've written,
20 and then I'll add a bit to that.

21 Subsection 9.3.d removes the sentence
22 that says not less than two years following the last
23 date of augmented seeding, and then continues the
24 secretary shall conduct a vegetative inspection to

1 verify the applicable standards for vegetative
2 success has been met.

3 The DEP should detain requirements for
4 the minimum two years of non-augmented vegetative
5 growth prior to inspection for Phase II bond
6 release. Otherwise, the agency has no assurance
7 that this seeding and planting will be successful in
8 the long term. It's a simple matter for DEP to
9 hydro-seed and make a disturbed area look green and
10 lush for a few months. Of much greater importance
11 though is the long term stability of the vegetation
12 and its ability to stabilize the land to prevent
13 erosion that would cause sedimentation and
14 impairment of receiving streams.

15 Two years should be considered the bare
16 minimum required to make a determination of long
17 term vegetative viability, and the requirement for
18 such should be retained in the rule.

19 Then we see the same strike in section
20 12.2.e.2.a, which states not less than two years
21 after the last augmented seeding, standards for re-
22 vegetation success has been met, and that sentence
23 has been struck for the proposed rule.

24 As discussed above, this attempt to

1 rush the timeline for Phase II bond release by
2 removing the two-year vegetative waiting period will
3 lead to poor vegetative outcomes, increased erosion
4 and stream sedimentation.

5 This requirement needs to stay in the
6 rule.

7 I have some personal experience
8 witnessing issues with failure of revegetation.
9 Right down the road here at the closest strip mine
10 down the road on MacCorkle, which is the Rush Creek
11 Complex. I was out on a site visit on the Rush
12 Creek Complex in early April, and the permits that
13 make up the Rush Creek Complex have been in
14 reclamation for several years now.

15 When you go out on that site, you look
16 around and you see failures of vegetative
17 establishment throughout, wide spread across these
18 permits.

19 These areas have been seeded
20 repeatedly, and the vegetation keeps washing away.
21 This is an example of why it's so important to have
22 some long term standard, at least two years at the
23 minimum, before you grant Phase II release, because
24 if you grant that Phase II release prematurely, it

1 becomes much more difficult to identify and address
2 the issues with vegetative failure on these sites.

3 The rest of my comments will be
4 contained in the written comments. Thank you.

5 MR. GLANCE: Up next is Bill Price. After
6 Bill is Angie Rosser. By the way, at the end of the
7 hearing, I will be asking if anybody else wants to
8 speak. So if you didn't sign up to speak at the
9 beginning of the meeting, if something comes to you
10 during the course of the public hearing that you
11 want to enter into the record, you can do that after
12 our last speaker. Bill.

13 MR. BILL PRICE: Thank you. Good evening.
14 My name is Bill Price. I am an organizing
15 representative for the Sierra Club based here in
16 Charleston and throughout West Virginia. I am also
17 formerly and for many years a resident of a little
18 town called Dorothy, West Virginia, where I spent
19 most of my life.

20 In that community every day, from the
21 time that a surface mine would go in, we started
22 hearing the blasting, not just at my home, but in
23 other homes around the area, and that led to a lot
24 of anxiety around property damage, and what we could

1 do about that.

2 These rules as they are currently
3 drafted, would take away protections that
4 communities around large mountaintop removal
5 projects think is necessary to not create a
6 situation where the property is -- the values are
7 lessened or their homes are damaged to the point
8 where they have to move away.

9 We will point out a few of these in
10 comments tonight, and then we also have written
11 comments that I'll be happy to submit about this
12 rule.

13 One of those has to do with the
14 deletion of the term that blasting plans would
15 minimize. It doesn't use the word "minimize." It
16 actually puts the word minimize in there, reduces
17 the -- and takes out the words "to the maximum
18 extent technically feasible."

19 Now, first of all, I'm not really happy
20 with that language, because I think that's not as
21 clear as it should be, but certainly to take and
22 remove those words as a way of measuring blasting
23 damage, and then putting up something that says we
24 are going to minimize any adverse impacts is unclear

1 and reduces the protection of the communities around
2 these mines.

3 At the very least, the rules should be
4 kept in with that wording of the maximum extent
5 technically feasible.

6 The new rule, proposed rule, also
7 changes and omits a provision about a blasting
8 notice sent to residents within seven-tenths of a
9 mile of a blasting.

10 Let me be clear here. We don't think
11 that's enough, but it should certainly still be in
12 there. We believe that the coal industry and the
13 coal company that is going to blast that mountain
14 away around these communities should be required to
15 at the very least let people know when blasting is
16 going to occur.

17 There are already requirements in there
18 about the necessity of having a pre-blast and the
19 rights of people to have a pre-blast survey. Why
20 would you still have that very needed protection and
21 then not have a notification process in there also?

22 We urge no change of the rule there.

23 There's also the point of the rule that
24 talks about -- that eliminates the ideal of the

1 requirement of the West Virginia DEP to "make
2 available information or material educating the
3 citizens about pre-blast surveys and blasting."

4 If the intent behind that is to
5 eliminate the agency's responsibility to do that,
6 that's terrible. It's absolutely -- I just can't
7 phantom why if you've given the right for a pre-
8 blast survey, why you would not want to educate the
9 citizens to their rights?

10 Eliminating that means -- tells the
11 people in the communities that the West Virginia
12 Department of Environmental Protection is not
13 concerned about their anxiety around blasting in
14 that area. I don't think that's where you want to
15 go, but if it is, that's a terrible admission.

16 We are all here understanding that the
17 West Virginia Department of Environmental Protection
18 is under-resourced, and if the West Virginia
19 Department of Environmental Protection wants to join
20 with citizen groups and residents around mountaintop
21 removal sites to ask for more money so that it can
22 do its job properly and better, we'll join in that.
23 I don't know if the Coal Association would like to
24 join in asking for more resources for the West

1 Virginia DEP so that they can do their job so that
2 it's fully protective of the citizens of West
3 Virginia, but I know people who are and will.

4 The other change, and I will try to
5 close with this one. The other change in regards to
6 blasting is that it eliminates the requirement that
7 blasting damage claims would be investigated by a
8 certified inspector.

9 I'm sorry. If I build a house, and I
10 put my own electricity wiring in it, I have to have
11 that inspected by a certified inspector that says
12 that wiring is up to snuff, is good so I don't burn
13 my house down.

14 You would think that the requirement of
15 a certified inspector for something that can be as
16 damaging as blasting to the homes in these
17 communities, would be a no brainer. But it's
18 unclear if you eliminate that in the rule, who and
19 to what degree they would be qualified to perform
20 such an investigation.

21 We also feel that there needs to be a
22 time limit in that investigation so that if a blast
23 occurs, I see a crack in my foundation, that I don't
24 have to wait and wait and wait for somebody from the

1 DEP to finally get out there. So we would urge five
2 to ten days limit that an investigation has to be
3 began in that limited period of time so that we are
4 not just waiting and waiting for the DEP to take
5 action.

6 We believe that all of these are
7 reasonable suggestions. Again, we stand ready to
8 work for the West Virginia DEP on getting more
9 funding in these tough economic times, but the West
10 Virginia DEP's work is extremely important to the
11 residents of West Virginia, and we all want you --
12 to see you do a better job.

13 Thank you.

14 MR. GLANCE: Up now is Angie Rosser.
15 After Angie is John Doyle.

16 MS. ANGIE ROSSER: Good evening. Angie
17 Rosser representing the West Virginia Rivers
18 Coalition, and we refer you to the written comments
19 that we have submitted that detail concerns related
20 to reclamation, blasting, insurance and bonding
21 regulations and effluent limitations.

22 We do have serious concerns about the
23 overall bonding system that is potentially setting
24 us up for economic and ecological disaster in years

1 to come. We urge that the agency work proactively
2 with stakeholder involvement on making policy
3 recommendations to fix this fragile system.

4 The focus of my comments this evening
5 reinforce DEP's attention to the proposed changes in
6 §14.5.b dealing with effluent limitations. This
7 section of the proposed rule would delete the
8 language prohibiting mining discharges that cause a
9 violation of water quality standards and replace it
10 with language requiring such discharges being made
11 in compliance with all applicable state and federal
12 water quality laws and regulations and another
13 section of the rule that also deletes the definition
14 of completion of reclamation, which currently
15 provides that reclamation is only complete when all
16 applicable effluent and applicable water quality
17 standards are met.

18 It appears from these changes combined
19 that DEP is attempting to remove the requirement
20 that mining discharges not cause violations of water
21 quality standards, and the rationale for these
22 policy changes need explained.

23 We contend that if the proposed
24 language is somehow read or interpreted to allow

1 noncompliance with water quality standards, it is
2 flat-out illegal and pre-empted by federal law.

3 DEP's rules cannot be less stringent
4 than, or inconsistent with OSM's rules which
5 requires compliance with all applicable water
6 standards.

7 If you look back at the historical
8 record it shows that both OSM and EPA have
9 previously found that requirement to comply with
10 water quality standards is necessary in order to
11 comply with SMCRA and the Clean Water Act.

12 Our grave concern is that if DEP is
13 intending to amend its regulations to ignore
14 violations of water quality standards, it is in
15 essence sanctioning wholesale impairment of our
16 state's waters on a regional scale.

17 A West Virginia federal district court
18 held in four citizen enforcement cases that eight
19 coal mines have violated the narrative permit
20 conditions in their permits by discharging high
21 levels of ionic chemicals that have caused
22 biological impairment in violation of West
23 Virginia's narrative water quality standard for
24 biological integrity.

1 The same type of violations are
2 occurring at many other West Virginia mines with
3 large valley fills. EPA stated in 2011 that nine
4 out of every 10 streams downstream from a surface
5 coal mining operation were impaired based on genus
6 level assessment of aquatic life. Allowing these
7 violations to go unaddressed and unremedied would be
8 a clear violation of federal law and a clear
9 violation of our members' right to use and enjoy
10 healthy waterways.

11 So it appears without any legitimate
12 reasons stated so far that West Virginia is trying
13 to eliminate an existing program provision that
14 requires a permit condition mandated compliance with
15 water quality standards.

16 The agency is not denying that coal
17 mines with valley fills are violating water quality
18 standards. It is not denying that the existing
19 requirement is necessary to prevent violations of
20 water quality standards.

21 So our question is why delete this
22 program?

23 We understand that many of the proposed
24 changes in this rule are initiated by the passage of

1 Senate Bill 687, possibly other bills. However, in
2 a look at 687, we don't see any directive that
3 dictates this specific change.

4 So on its face, it appears like it
5 boils down to a deliberate effort to prevent
6 enforcement of federally enforceable water quality
7 standards to protect the mining industry while
8 escaping both citizen enforcement and federal
9 oversight, and in the meantime, our rivers and
10 streams and the people who rely on them pay the
11 price.

12 Thanks.

13 MR. GLANCE: John Doyle. After John is
14 Jim Waggy.

15 MR. JOHN DOYLE: Thank you. I am John
16 Doyle. I am here on my own behalf.

17 I served 22 years in the West Virginia
18 House of Delegates, and whenever the legislature
19 passes a statute and assigns the enforcement of that
20 statute to a particular agency, it *ipso facto* gives
21 that agency some discretion in enforcing the
22 statute.

23 I would like to suggest that while I'm
24 not in favor of penalizing the coal industry

1 certainly, you have to stop and think there are
2 other industries in our state that rely on clean air
3 and clean water and clean land, and particularly the
4 tourist industry.

5 while our governor has strongly
6 promoted the coal industry, he has also strongly
7 promoted the tourism industry, and again,
8 particularly when it comes to water for drinking and
9 for recreation. I think it is critical that you use
10 whatever discretion you have to make sure that
11 nothing is done to impair drinking water and
12 recreation water.

13 Also I would like to point out that, as
14 has been mentioned before, the bonding requirements
15 on the reclamation from a physical standpoint, it is
16 critical that the bonding be sufficient to cover
17 anything that remains if somebody -- if a company
18 goes bankrupt or leaves the site, you've got to have
19 enough there.

20 That's all I have to say. Please use
21 your discretion on behalf of the people of West
22 Virginia.

23 MR. GLANCE: Jim Waggy is up next.

24 MR. JIM WAGGY: So my name is Jim Waggy,

1 and I am with West Virginia Kanawha Forest
2 Coalition.

3 Some of the preceding speakers have
4 mentioned specific examples of how these proposed
5 changes would weaken the regulations, and as I read
6 over the regulations, that's what it looks like to
7 me that it would be a matter of weakening them.

8 So I would like to raise a question
9 just in general terms why is that the approach we
10 are taking now? why are we weakening rather than
11 strengthening these rules and regulations?

12 I can understand there's a lot of
13 financial uncertainty in the coal industry right
14 now, both now and looking toward the future with all
15 the bankruptcies that have occurred and the
16 restructuring.

17 I can understand why they would look
18 for ways to save costs. However, I feel like this
19 financial uncertainty is all the more reason to be
20 concerned for a regulatory agency that companies
21 will not retain sufficient financial strength to
22 complete reclamation to a satisfactory extent.

23 I was on the same visit that Chad
24 Cordell mentioned earlier, an all day visit up at

1 the Rush Creek and KD-1 mine complex. It's just as
2 he mentioned a few minute drive from here, and
3 that's a clear example that even with the existing
4 rules we have now, we're not getting good outcome.
5 We're far from it, and I don't think that's the only
6 place we could look, and I definitely know it's not
7 the only place we could look to find those same kind
8 of problems.

9 I think we can also look at the federal
10 -- the law suits that have taken place in federal
11 court, and the outcomes there that clearly
12 demonstrate that water quality standards are not
13 being upheld under the existing rules.

14 So it seems to me that in this
15 environment of such great financial uncertainty, if
16 any changes need to be made to the regulations, they
17 should be changes that strengthen the -- strengthen
18 them and ensure that the responsibilities and the
19 costs of successful reclamation don't end up
20 shifting from a coal company to the Department of
21 Environmental Protection and the citizens of West
22 Virginia.

23 Thank you.

24 MR. GLANCE: There are some other people

1 who signed in, but they didn't indicate if they
2 wished to speak. Anybody else who wishes to speak
3 tonight?

4 MR. CHAD CORDELL: I have a couple more
5 comments I would like to add.

6 MR. GLANCE: Sure, come on up.

7 MR. CHAD CORDELL: Chad Cordell again with
8 the Kanawha Forest Coalition. I've been to a couple
9 of hearings here, and it's a little disconcerting
10 because I feel like the people often who are making
11 the decisions on whatever topic the hearing is
12 about, aren't here. I keep looking over here
13 because you all are the people here with the DEP,
14 but I want to be talking to the people or the person
15 who is actually making the decision, and I feel like
16 it's very important for that -- okay, great.

17 MR. CHARLIE STUREY: I respond to all
18 comments.

19 MR. CHAD CORDELL: Can you answer
20 questions?

21 MR. CHARLIE STUREY: No, not now.

22 MR. CHAD CORDELL: Is there a public forum
23 in which the public can ask questions about these
24 changes, some of which are complex and deal with

1 lots of different rules and laws and what-not? Is
2 there a forum in which the public can ask questions
3 about the changes that are being proposed about the
4 motivation --

5 MR. CHARLIE STUREY: There's a difference
6 between a meeting and a hearing. This is a hearing
7 versus meeting. If it was a public meeting,
8 probably yes. A hearing, we cannot -- legally
9 cannot, cannot give a comment to anybody until the
10 close of the hearing about any rule.

11 MR. CHAD CORDELL: Is there a meeting, a
12 public meeting --

13 MR. CHARLIE STUREY: There is no state law
14 for a public meeting. There is for a hearing.

15 MR. CHAD CORDELL: Would you be willing to
16 hold a public meeting in which questions could be
17 asked and answered?

18 MR. CHARLIE STUREY: I'm not the person
19 who makes that decision. It is not part of the
20 rulemaking process of the legislative process act.
21 Now, the legislature can and has had public meetings
22 during session. They do that. But during
23 rulemaking, I do not know of anything called a
24 public meeting. I can't even say that to you.

1 MR. CHAD CORDELL: For the record, since
2 we haven't met, could you answer the question of
3 what is your name?

4 MR. CHARLIE STUREY: Charlie Sturey.

5 MR. CHAD CORDELL: And what is your
6 position with DEP?

7 MR. CHARLIE STUREY: I'm a Deputy
8 Assistant Chief.

9 MR. CHAD CORDELL: Okay, wonderful. Thank
10 you. I was about to phrase this as a question.
11 I'll phrase it as a statement instead. My
12 presumption is that you will be making the decision
13 to either move ahead or to retract these proposed
14 changes with the Secretary and other people who are
15 involved --

16 MR. CHARLIE STUREY: It will be filed with
17 the Secretary of State.

18 MR. GLANCE: The court reporter is having
19 trouble getting all this back and forth. So if we
20 can continue this discussion later after the meeting
21 has concluded.

22 MR. CHAD CORDELL: All right, excellent.
23 Thank you. One final suggestion for the record is
24 that I would love to see the Secretary of the DEP

1 attend these hearings as well so that he can hear
2 from the public and hear our concerns and comments.

3 Thank you.

4 MR. MICHAEL WHITTEN: I would like to
5 speak too.

6 MR. GLANCE: What is your name?

7 MR. MICHAEL WHITTEN: Michael Whitten.

8 MR. GLANCE: Michael Whitten, yes.

9 MR. MICHAEL WHITTEN: I am here with my
10 brother, Ronnie. We have both been coal miners. He
11 was disabled in the mines. I worked eight-and-a-
12 half years in the mines, and I worked construction
13 as a contractor at mines probably eight or ten years
14 after that off and on in the mines, and many, many
15 of the strip mines, seen many, many of these nasty
16 hundred-plus ponds. I saw the damage and
17 destruction, and my brother lives at Prenter. It
18 didn't used to be famous, but I think it's world
19 famous now for bad water. I've drank it and took
20 showers in it. In fact, I was up there this evening
21 and took a shower, but he's got clean water now.
22 It's from the Elk River.

23 We're concerned about water quality.
24 What drains off the strip mines goes in my creek and

1 into my river. We baptize in our river. Our church
2 does.

3 The stream that runs six miles from the
4 top of the mountain where I live to Coal River, Big
5 Coal River, my community and I have cleaned all that
6 out, and cleaned it so it would be a cleaner stream
7 and it would be clean when it ran -- and it runs in
8 just right above where we baptize.

9 We think these regulations would not
10 keep our streams clean, and I'm worried about the
11 bond issue too. Me as a taxpayer, next month I'm
12 going to pay our county \$1,200 tax. I'm a taxpayer,
13 and I don't want to be paying for these mines that
14 leave this property, because I've seen it in my
15 lifetime when I worked on the strip. I have worked
16 at mines that mines pull out that didn't pay their
17 last wages and they left a mess, and we taxpayers
18 pay for it and I have to pay for it.

19 Thank you.

20 MR. GLANCE: Anyone else who wishes to
21 speak tonight? If not, this concludes the public
22 hearing on 38CSR2. This also concludes the public
23 comment period for this proposed rule.

24 Thank you all for your

1 participation and have a nice evening and a safe
2 trip home.

3 * * * *

4 CONCLUDED AT 6:45 P.M.

5 * * * *

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Donna H. Miller, Notary Public in and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing was duly taken by and before me, under the West Virginia Rules of Civil Procedure, at the time and place and for the purpose specified in the caption thereof.

I do certify that the said hearing was correctly taken by me by means of the Stenomask; that the same was transcribed by me, and that the said transcript is a true record of proceedings had.

I further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, or financially interested in the action, or interested, directly or indirectly, in the matter in controversy.

Given under my hand this 24th day of
July, 2017.

Donna H. Miller
Notary Public

My commission expires October 1, 2023.

Anderson, Carol Y

From: Ashlee Riner <ar2234@cornell.edu>
Sent: Friday, July 14, 2017 2:04 PM
To: DEP Comments
Cc: Derek Teaney
Subject: Proposed Surface Mining Reclamation Rule 38 C.S.R. § 2 Comment Letter
Attachments: 38 C.S.R. § 2 Public Comment Letter.pdf

Dear Mr. Ward,

Please see below the comment letter regarding proposed rule 38 C.S.R. § 2 on behalf of Appalachian Mountain Advocates, the West Virginia Chapter of Sierra Club, the Ohio Valley Environmental Coalition, the West Virginia Rivers Coalition, and the West Virginia Highlands Conservancy. If there are any problems with the electronic transmission of this letter, please let me know.

Sincerely,

Ashlee Riner
Cornell Law School
JD Candidate, Class of 2018
ar2234@cornell.edu

Anderson, Carol Y

From: Vernon Haltom <vernon@cmw.net>
Sent: Tuesday, July 18, 2017 4:49 PM
To: DEP Comments
Subject: Rule 38CSR2

I object to the proposed rule changes. Our streams need stronger, not weaker, protections. Reclamation requirements need to be more stringent, not even weaker. Resist the demands of coal industry lobbyists. Do your job for the people, and uphold your mission. Thank you.

--
Vernon Haltom
Executive Director
Coal River Mountain Watch
304-952-4610 cell
304-854-2182 office

Anderson, Carol Y

From: Elaine Komarow <elaine@siriusacupuncture.com>
Sent: Friday, July 14, 2017 8:54 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

I am very concerned the proposed changes to WVDEP's Surface Mine Reclamation Rule would weaken compliance with water quality standards.

Our life and livelihoods depend on clean water, trees, and the natural and ongoing beauty of West Virginia.

Weakening the rules increases the short term profits of mining companies and leaves the citizens of West Virginia to suffer the consequences of the environmental damage for decades.

please don't trade our long-term well-being for short-term profits. Our future depends upon it.

Elaine Komarow
elaine@siriusacupuncture.com
201 Warden Lake Hollow
Wardensville, West Virginia 26851

Anderson, Carol Y

From: Nancy Dawley <ndawley@msn.com>
Sent: Saturday, July 15, 2017 9:43 PM
To: DEP Comments
Cc: Nancy Dawley
Subject: rule number 38CSR2

The changes to the Surface Mine Reclamation Rule 38CSR2 would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies.

The proposed rule opens the door to further large-scale degradation of stream life.

It appears to attempt to get coal companies off the hook by removing the requirement that mining discharges not cause violations of water quality standards. Allowing these violations to go unaddressed would be a clear violation of the Surface Mining Control and Reclamation Act and the Clean Water Act.

The proposed rule endangers restoration of streams damaged by surface mining.

It removes the definition of “completion of reclamation,” which currently provides that reclamation is complete only when water quality standards are met. This deletion is inconsistent with the federal and state requirements that mining operators comply with all discharge limitations and water quality standards. It also removes the requirement that there be no violations prior to bond release.

Considering the high costs of reclamation and the potential for bond forfeiture in this challenging coal market, the state should be increasing bond amounts and making it more difficult to get bond release. Otherwise, taxpayers are being set up to bear the cost.

38CSR2 is a bad idea for taxpayers, for people drinking water in West Virginia, and for the plants and animals living alongside the polluted streams and rivers. Current water quality rules should remain.

Nancy Dawley; 7497 Hosbrook Rd.; Cincinnati, OH 45243

Anderson, Carol Y

From: Sherrill Futrell <safutrell@ucdavis.edu>
Sent: Saturday, July 15, 2017 5:36 PM
To: DEP Comments
Subject: 38CSR2

Dear West Virginia,

Why should I visit your state and spend my vacation dollars there if you don't protect the only environment you have? I would like to visit WA but prefer to go to clean, safe places instead.

Please do not weaken the Surface Mine Reclamation Rule regarding compliance with water quality standards and please do not reduce the bonding and reclamation requirements for coal companies. You do not need MORE degradation of stream life or more destruction of streams damaged by surface mining.

Please do NOT put your taxpayers on the hook for the damage that the coal companies caused! A lot of them are already poor. You need to keep the requirement that mining discharges not cause violations of water quality standards. Federal and state governments REQUIRE that mine companies comply with all discharge limitations and water quality standards. And for good reason. Allowing these violations to go unaddressed would be a clear violation of the Surface Mining Control and Reclamation Act and the Clean Water Act.

Furthermore, the state should be INCREASING bond amounts and making it more difficult to get bond release.

Please protect your citizens, taxpayers, tourists, and environment. Thank you.

Sherrill Futrell

Davis, CA

Anderson, Carol Y

From: Colleen <colleenharshbarger@gmail.com>
Sent: Saturday, July 15, 2017 3:41 PM
To: DEP Comments
Subject: Surface Mining

Hello,

I am writing to plead for no changes be made to weaken compliance with water quality standards through modification of the Surface Mine Reclamation Rule. West Virginia's natural resources are our best asset. Let's protect our water and the environment, our health depends on this and creating short cuts for coal companies is short sighted!

Thank you for your work.

Sincerely,

Colleen Harshbarger

Wellbeing Solutions

Wellebingwv.com

304-508-2398

Sent from my iPhone

To WVDEP

July 14, 2017

To those concerned;

Please do not weaken the "Surface Mining Reclamation Rule" and protect our waters from coal mining drainage. Our natural environment is our most precious resource. Don't allow corporate greed to destroy it. You are our only hope.

Sincerely,
Elaine J. Wene
Chairperson Braxton
Concerned Americans

Anderson, Carol Y

From: Support WV Interactive
Sent: Tuesday, July 18, 2017 7:11 AM
To: Glance, Jacob P
Subject: contact-us - Janet

[Home](#)

Janet has been added

[Modify my alert settings](#) [View Janet](#) [View contact-us](#)

First Name: Janet

Last Name: Hayes

E-mail Address: JanetH.25419@gmail.com

Phone Number:

Message:

I am opposed to the Surface Mine Reclamation Rule (38CSR2) because it will cause degradation of stream life and endangers the restoration of streams damaged by surface mining.
The changes to the Surface Mine Reclamation Rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies.
The proposed rule opens the door to further large-scale degradation of stream life.
It appears to attempt to get coal companies off the hook by removing the requirement that mining discharges not cause violations of water quality standards. Allowing these violations to go unaddressed would be a clear violation of the Surface Mining Control and Reclamation Act and the Clean Water Act.
The proposed rule endangers restoration of streams damaged by surface mining.
It removes the definition of "completion of reclamation," which currently provides that reclamation is complete only when water quality standards are met. This deletion is inconsistent with the federal and state requirements that mining operators comply with all discharge limitations and water quality standards. It also removes the requirement that there be no violations prior to bond release.
Considering the high costs of reclamation and the potential for bond forfeiture in this challenging coal market, the state should be increasing bond amounts and making it more difficult to get bond release. Otherwise, taxpayers are being set up to bear the cost. WV motto is "WILD & WONDERFUL". Let's do everything in our power to keep it that way.
Janet Hayes

County: Berkeley

City:

Phone Number:

Anderson, Carol Y

From: Karlene Gunter <k0karlene@gmail.com>
Sent: Monday, July 17, 2017 3:16 PM
To: DEP Comments
Subject: rule number (38CSR2)

The changes to the Surface Mine Reclamation Rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies.

The proposed rule opens the door to further large-scale degradation of stream life.

It appears to attempt to get coal companies off the hook by removing the requirement that mining discharges not cause violations of water quality standards. Allowing these violations to go unaddressed would be a clear violation of the Surface Mining Control and Reclamation Act and the Clean Water Act. Water quality in West Virginia is already in many areas and threatens the health of the people who live nearby. Water quality should be improved, not decreased.

The proposed rule endangers restoration of streams damaged by surface mining.

It removes the definition of "completion of reclamation," which currently provides that reclamation is complete only when water quality standards are met. This deletion is inconsistent with the federal and state requirements that mining operators comply with all discharge limitations and water quality standards. It also removes the requirement that there be no violations prior to bond release.

Considering the high costs of reclamation and the potential for bond forfeiture in this challenging coal market, the state should be increasing bond amounts and making it more difficult to get bond release. Otherwise, taxpayers are being set up to bear the cost. Too many coal companies declare bankruptcy to get out of their obligations to properly restore the land and water that they contaminate. They then start a new company with no obligations. Therefore, bonds should be large enough to cover restorations, even if the company "fails".

I don't live in West Virginia, but I have relatives who do.

Karlene Gunter

472 French Road

Rochester, NY 14618



MURRAY ENERGY CORPORATION

46226 National Road
St. Clairsville, Ohio 43950

PHONE: (740) 338-3100
FAX: (740) 334-3405
www.murrayenergycorp.com

July 18, 2017

Via U.S. Mail and E-Mail (dep.comments@wv.gov)
West Virginia Department of Environmental Protection
Mr. Jacob P. Glance, Director
Public Information Office
601 57th St. S.E.
Charleston, WV 25304

Re: Proposed Revisions to Surface Mining Reclamation Rule, 38 C.S.R. 2.

Dear Mr. Glance:

Thank you for the opportunity to provide comments on the West Virginia Department of Environmental Protection ("DEP")'s proposed revisions to the regulations governing coal mining and reclamation, as set forth in W.Va. C.S.R. Title 38, Series 2 (the "Mining Rules"). These comments are submitted on behalf of Murray Energy Corporation ("Murray").

Murray is the largest privately-owned coal company in the United States, producing nearly seventy-two million tons of high quality bituminous coal each year, and employing approximately 6,000 people in six states. In West Virginia, Murray or its subsidiaries operate five of the top seven underground mines and produce more than thirty million tons of coal through the efforts of nearly 3,000 employees. Murray is therefore acutely aware of the overall impact of DEP regulations on the sustainability of coal mining operations in West Virginia, and has a great interest in ensuring that the rules governing our operations are fair, rational, and consistent with the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201, et seq. ("SMCRA").

With respect to the pending proposed amendments to the Mining Rules, Murray is very concerned that, *contrary to Legislative direction*, the DEP has not proposed any substantive changes to the regulations governing bond release found at 38 C.S.R. § 2-12. The DEP proposes to relocate, rather than revise, this provision addressing the criteria for a permittee to obtain bond release. In particular, the *existing* version of the regulations, 38 C.S.R. § 2-12.2.e., provides that "no bond release or reduction will be granted if, at the time, water discharged from or affected by the operation requires chemical or passive treatment in order to comply with applicable effluent limitations or water quality standards," unless (1) the remaining bond is adequate to assure long term treatment of the drainage; or (2) the operator has "irrevocably committed" adequate financial resources to assure long term treatment of the drainage. The DEP's proposed amendment moves this provision from 38 C.S.R. § 2-12.2.e to (new) 38 C.S.R. § 2-12.2.a.4 without making *any* actual revisions to the language.

Rather than merely re-order its location with the Mining Rules, Murray asks that the DEP *delete* proposed 38 C.S.R. § 2-12.2.a.4 and substitute in its place relevant portions of the corresponding federal rule (30 C.F.R. § 800.40), for the following reasons:

First, the existing provision does not appear either in SMCRA or in the federal regulations promulgated by the U.S. Department of Interior's Office of Surface Mining Reclamation and Enforcement ("OSM") to implement SMCRA. Specifically, *nothing* in SMCRA ties release of a SMCRA performance bond to a permittee's compliance with "effluent limitations or water quality standards." Further, no OSM regulation does so. This makes sense because compliance with "effluent limitations and water quality standards" is regulated through permits issued under the National Pollutant Discharge Elimination System ("NPDES") or delegated state NPDES programs, authorized and administered under the federal *Clean Water Act*, 33 U.S.C. § 1251, et seq. – not SMCRA.

Compliance obligations pursuant to SMCRA are separate and independent from compliance obligations under the Clean Water Act. This provision in the Mining Rules tying SMCRA bond release to NPDES permit conditions or Clean Water Act treatment obligations is not necessary to ensure that West Virginia's regulatory program continues to satisfy the programmatic requirements to maintain primacy under SMCRA. Similarly, this provision is not necessary for the DEP to maintain its delegated authority to administer the NPDES program in West Virginia.

Second, maintaining this provision in the Mining Rules continues to improperly blur the line between SMCRA and Clean Water Act compliance. As noted above, SMCRA and the Clean Water Act each establish separate and independent compliance standards. Indeed, SMCRA expressly provides that it should *not* be construed as replacing or superseding the regulatory programs created under the Clean Water Act. 30 U.S.C. § 1292(a)(3). By continuing to mix the two regulatory spheres in the Mining Rules, DEP risks creating situations where SMCRA could be applied to impose obligations more stringent than the Clean Water Act, in direct violation of this federal law. Such overlapping regulation creates confusion and uncertainty, causes problems in dealing with multiple federal agencies, and spurs litigation.

Third, during the 2017 legislative session, the Legislature passed, and Governor Justice signed into law, Senate Bill 687. That law expresses a direct Legislative decision to keep SMCRA and the Clean Water Act separate, in at least two ways. First, the West Virginia Surface Coal Mining and Reclamation Act, W.Va. Code § 22-3-1, et seq. ("WVSCMRA") was amended to eliminate any statutory basis for a requirement of compliance with effluent limitations or water quality standards as a condition precedent to bond release. Specifically, the Legislature deleted language appearing in the former version of W. Va. Code § 22-3-23(c)(2) that precluded bond release unless the "the quality of any untreated post-mining discharge complies with applicable water quality criteria[.]" Second, the Legislature made it clear that water treatment obligations and reclamation obligations must be addressed independently, by specifying that monies from the Water Trust Fund established under W. Va. Code § 22-3-11(g) ("Water Trust Fund") may only be used to construct and operate water treatment systems on bond forfeited sites where the DEP "has

obtained or applied for an NPDES permit as of the effective date of [the] article.” No longer will DEP be authorized to allocate money from the Special Reclamation Fund or Water Trust Fund toward water treatment systems at forfeited sites unless DEP has already obtained or applied for a NPDES permit. As the agency is aware, DEP’s obligation to apply for and obtain NPDES permits for forfeited sites was required by court order and based upon rulings that the DEP was required to do so under the *Clean Water Act*, not SMCRA.

Senate Bill 687 is wholly consistent with the SMCRA regulatory sphere being completely separate and independent from the Clean Water Act regulatory realm. As a SMCRA program, the Special Reclamation Fund (out of which the Water Trust Fund was created) was not intended to serve as a source of funding for Clean Water Act compliance. Allowing the substance of current 38 C.S.R. § 2-12.2.e to remain in place is contrary to the Legislature’s clear directive that DEP should administer the mining program in a way that considers SMCRA liability independent of Clean Water Act liability. As DEP is not permitted to spend money from the Special Reclamation Fund for water treatment on forfeited sites, it makes no sense to tie SMCRA bond release to Clean Water Act compliance. Clean Water Act liability remains regardless of bond release, so permittees should be able to obtain bond release independent of Clean Water Act liability.

In addition to the statutory changes referenced above, the Legislature amended the WVSCMRA to include language directing that DEP “shall propose rules for legislative approval during the 2018 regular session of the Legislature . . . to implement the revisions to this article made during the 2017 session.” W. Va. Code § 22-3-23(i). Moreover, the Legislature further stated that DEP “shall specifically consider the adoption of corresponding federal standards codified at 30 C.F.R. 700 *et. seq.*” This should eliminate any doubt that DEP should delete the existing bonding discussed above and substitute the SMCRA counterpart in its place.

Fourth, in 2016 the Legislature enacted Senate Bill 619, which directs all state executive agencies to review their respective regulations, guidelines, policies, and recommendations to determine whether they are more stringent than their federal counterparts. Each agency must submit a report to the Legislature by November 1, 2017, identifying rules that are more stringent than the federal counterpart. The existing bonding provision discussed above is undeniably more stringent than its federal counterpart. Moreover, the provision is inconsistent with maintaining separate regulatory frameworks for SMCRA and the Clean Water Act. There is no valid reason for further delay in implementing a modification of current 38 C.S.R. 2-12.2.e to substitute the relevant portions of 30 C.F.R. § 800.40, so that this section of the Mining Rules is no longer more stringent than SMCRA.

In this regard, Murray commends the DEP on its wise proposal to revise another section of the Mining Rules addressing water discharges, to mirror the SMCRA standard. The proposed revision to 38 CSR § 2-14.5.b would remove the existing provision that states that “[d]ischarges of water from areas disturbed by surface mining activities shall not violate effluent limitations or cause a violation of applicable water quality standards.” In its place, DEP has proposed to substitute the federal counterpart appearing in 30 C.F.R. § 816.42. Revision of the bonding

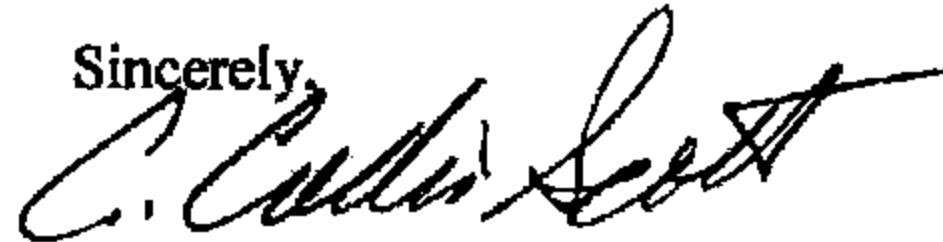
West Virginia Department of Environmental Protection
Mr. Jacob P. Glance, Director, Public Information Office
July 18, 2017
Page 4

provision as we have suggested would be wholly consistent with this revision to make both sections of the Mining Rules mirror their SMCRA counterparts.

In addition to the comments set forth above, Murray generally joins in and supports the comments submitted by the West Virginia Coal Association on the DEP's proposed amendments to the Mining Rules addressing the bond release provisions and other changes that have been proposed.

Murray appreciates the opportunity to offer these written comments. Murray reserves the right to present additional comments at public hearings. If you have any questions concerning these comments, please feel free to contact me.

Sincerely,



C. Crellin Scott
Director of Regulatory Affairs

cc: Charles S. Sturey, Environmental Resources Program Manager,
Division of Mining and Reclamation (via e-mail)

Harold Ward, Director, Division of Mining and Reclamation (via e-mail)

Austin Caperton, Cabinet Secretary

Jason Bostic, West Virginia Coal Association

Michael T.W. Carey, Vice President of Government Affairs, Murray Energy Corporation



West Virginia Coal Association

PO Box 3923, Charleston, WV 25339 • (304) 342-4153 • Fax 342-7651 •

July 18, 2017

Mr. Charles Sturey
West Virginia Department of Environmental Protection
Division of Mining & Reclamation
601 57th Street
Charleston, WV 25304
Via Electronic Mail: Charles.S.Sturey@wv.gov
dep.comments@wv.gov

Re: Public Comment Period on Proposed Revisions to the Surface Coal Mining & Reclamation Rule, 38 CSR 2.

Dear Mr. Sturey:

Pursuant to the public notice published by the Division of Mining & Reclamation (DMR), the West Virginia Coal Association (WVCA) offers the following comments regarding the agency's proposed revisions to the state's Surface Mining Reclamation Rules, 38 CSR 2.

The West Virginia Coal Association (WVCA) is a non-profit state coal trade association representing the interests of the West Virginia coal industry on policy and regulation issues before various state and federal agencies that regulate coal extraction, processing, transportation and consumption. WVCA's general members account for 98 percent of the Mountain State's underground and surface coal production. WVCA also represents associate members that supply an array of services to the mining industry in West Virginia. WVCA's primary goal is to enhance the viability of the West Virginia coal

industry by supporting efficient and environmentally responsible coal removal and processing through reasonable, equitable and achievable state and federal policy and regulation. WVCA is the largest state coal trade association in the nation.

Introduction

Beginning in 2015, the West Virginia Legislature has made several revisions to the comprehensive statutes that regulate coal mining within the State of West Virginia to help stabilize the regulatory programs and provide predictability for the state’s coal mining industry and its employees. Included in these changes were revisions to the West Virginia Water Pollution Control Act (WV WPCA) and, specific to the current comment period, the West Virginia Surface Coal Mining & Reclamation Act (WV SCMRA).¹ The most recent revisions to the state’s surface mining program were enacted in March 2017 as part of Senate Bill (SB) 687.²

The changes to the WV SCMRA were intended to address certain provisions of West Virginia’s mining statute that were substantially different than the corresponding provisions of the federal Surface Mining Control & Reclamation Act (SMCRA) and its implementing regulations maintained by the federal Office of Surface Mining (OSM). These differences made West Virginia’s mining regulatory program more stringent than the federal program and most of our surrounding states.

¹ See generally Senate Bill 357 enacted by the Legislature in 2015
http://www.legis.wv.gov/Bills_2015/2015_Senate_Bills/357 and House Bill
4726 enacted by the Legislature in 2016
http://www.legis.wv.gov/Bills_2016/2016_House_Bills/4726

² See generally http://www.legis.wv.gov/Bills_2017/2017_Senate_Bills/687

Additionally, the complexity of the statutory provisions and rules provided opportunities for entirely different interpretations and application of the standards by OSM in their mining oversight role. The lack of equivalent standards in the federal regulatory program invites mischief, leaving the state program open to the subjective interpretations of OSM and others. In many cases, these interpretations were directly contrary to the desired intent of the Legislature and WV DEP in enacting the provisions, allowing federal oversight agencies or anti-mining groups and activist judges to hijack the state's regulatory program.

In the case of the revisions to the WV WPCA, these statutory changes were intended to strengthen the state's environmental regulatory programs by creating an enforcement process for Clean Water Act (CWA) Section 402 NPDES permits issued by the West Virginia Department of Environmental Protection (WV DEP) for coal mining operations.³ WV DEP promulgated a new administrative rule, 47 CSR 30B, to fully implement the statutory changes to the WV WPCA which was approved by the West Virginia Legislature in 2016.⁴ Coupled with statutory changes contained in SB 357 (passed in 2015), the new rule established an enforcement process that corresponds to the requirements of the federal regulatory program implemented by the Environmental Protection Agency (EPA).

³ See generally §22-11-22a, enacted by the Legislature in 2015 with the passage of Senate Bill 357

<http://www.legis.wv.gov/bills/sb/350-399/sb357.htm>

⁴ See generally 47 CSR 30B, Administrative Proceedings and Civil Penalty Assessments for Coal Mining NPDES Permits.

While the statutory revisions and the rulemaking processes completed by the agency in 2015 and 2016 have substantially improved the mining regulatory program's stability, WVCA believes the current proposal by the agency does not fully implement the intent of the Legislature to conform the state's programs to their federal counterparts. More specifically, by failing to revise several individual sections of the state rule in the current proposal, WVCA feels that WV DEP has failed to satisfy the mandates of SB 687.

The statutory changes enacted by the Legislature and the subsequent WV WPCA rulemaking by WV DEP were intended to recognize the distinct regulatory and enforcement functions established by SMCRA, the CWA and the corresponding state programs. Unfortunately, WV DEP's administration of its mining regulatory program has muddled the two, with a reliance on its SMCRA-based program to implement CWA and NPDES-like controls. As we explain in more detail in subsequent sections, this is counter to intended purpose of the two programs as declared by Congress and years of regulatory interpretation and implementation by OSM and EPA. As noted in an early federal court decision regarding the scope of SMCRA and its implementing regulations:

Congress meant exactly what it said in Section 702(a)(3) of the Act [SMCRA], that where there is an overlap of regulation, the Surface Mining Act is not to be interpreted as altering in any fashion the Federal Water Pollution Control Act.⁵

⁵ See generally *re Surface Mining Regulation Litigation*, 627 F.2d 1346, 1366 (D.C. Cir. 1980).

WV DEP's historic practice of relying on its SMCRA program in an attempt to implement the CWA has placed the mining regulatory program in peril, particularly as it regards the bonding provisions of the state program and its alternative bonding system (ABS). The Legislature recognized that WV DEP was not using its SMCRA program to address an "absence of regulation" or a "regulatory gap"⁶, but instead was executing its mining rules as though the CWA and the extensive NPDES permitting and enforcement program does not exist and sought to correct the situation with the passage of SB 357 and SB 687.

As illustrated by the rule provisions that were left unchanged in the agency's current proposal, WV DEP erroneously seems to believe that bond forfeiture under SMCRA ends a permittee's responsibility to comply with their NPDES permits and prevents enforcement by the agency under the CWA and WV WPCA.

In essence, WV DEP fails to acknowledge that compliance with the terms and conditions of the CWA and its NPDES permits and effluent limits occurs throughout the country and within the state of West Virginia at facilities that are not and were never subject to regulation under SMCRA and the state mining regulatory program. Similarly, if the entire SMCRA regulatory structure and its counterpart state primacy programs were to suddenly disappear, it would have no effect or any in way alter a coal mining operation's responsibility to maintain compliance with its NPDES permits and associated effluent limits.

⁶ See *generally* re Surface Mining Regulation Litigation, 627 F.2d 1346, 1366 (D.C. Cir. 1980).

As we detail in our subsequent comments, several of the rule provisions retained by WV DEP continue to scramble the two programs, falling far short of SMCRA's instruction to only "fill gaps" between the CWA and SMCRA and where the two overlap, "the [CWA] and its regulatory framework are to control so as to afford consistent standards ... nationwide."⁷ **With the revisions to the WV WPCA, the promulgation of a comprehensive NPDES enforcement rule for coal mining operations and the changes to WV SCMRA there is simply no conceivable "gap" between the CWA and SMCRA for the state mining regulatory program to fill.**

General Comments: SB 687

Since the statutory revisions included in SB 687 should have controlled and directed the proposed changes contained in the current proposal, WVCA believes a review of its provisions is warranted.

SB 687, in addition to containing a broad requirement that WV DEP "specifically consider the adoption of corresponding federal requirements", made several changes to the provisions related to bonding requirements and the operation of the state's alternative bonding system (ABS), the Special Reclamation Fund (SRF).

These revisions were intended to clarify WV SCMRA's relationship to the CWA, the WV WPCA and the SRF's liability for NPDES discharges. Entirely consistent with federal policy and regulation regarding SMCRA reclamation bonding liability, the amended sections limit the responsibility of the SRF to treat water to sites where the

⁷ See generally *re* Surface Mining Regulation Litigation, 627 F.2d 1346, 1366 (D.C. Cir. 1980).

agency has obtained NPDES permits under the WV WPCA. The changes acknowledge, as does OSM and the federally-approved regulatory programs of surrounding states, the existence of the comprehensive permitting and enforcement platforms under the CWA and its state counterparts. SB 687's modifications to WV SCMRA also recognize, as does OSM, the need to maintain a distinction between the requirements of SMCRA and the CWA:

...in adopting these rules, we reiterate that nothing in SMCRA provides the SMCRA regulatory authority with jurisdiction over the Clean Water Act or the authority to determine when a permit or authorization is required under the Clean Water Act. Under paragraphs (a) and (a)(2) of section 702 of SMCRA, nothing in SMCRA (and by extension regulations adopted under SMCRA) may be construed as superseding, amending modifying or repealing the Clean Water Act or any state laws or state or federal rules adopted under the Clean Water Act. In addition, nothing in the Clean Water Act vests the SMCRA regulatory authorities with the authority to enforce compliance with the permitting and certification requirements of that law.⁸

...we believe that maintaining the distinction between the SMCRA and Clean Water Act regulatory programs is both administratively and legally appropriate.⁹

Before the changes to §22-3-11 contained in SB 687, the SRF was assumed to be responsible for maintaining compliance with NPDES effluent limits at future bond forfeiture sites, essentially ignoring the duties and responsibilities imposed on those permit holders by the CWA and the WV WPCA. By doing so, West Virginia essentially “canceled out”, through its ABS program under the guiding framework of SMCRA

⁸ 73 FR 75842, December 12, 2008.

⁹ 73 FR 75821, December 12, 2008.

through WV SCMRA, the enforcement program and liability provisions under the CWA and WV WPCA despite the admonition from Congress that “...nothing in SMCRA may be construed as amending, modifying, repealing, or superseding any Clean Water Act requirement” and OSM’s acknowledgment that it “cannot, in its approval of a State program amendment alter existing CWA laws in any State.”¹⁰ As detailed by OSM (and endorsed by the U.S. Department of the Interior) in a 1991 exchange:

The report implies that the RA [OSM] is responsible for treating pollutional discharges when an operator or permittee is no longer able or willing to do so. *SMCRA lacks the authority to enable the Secretary to require states to undertake such responsibilities. The IG [Inspector General] is proposing a significant fundamental shift in Government policy regarding liability under the Federal Water Pollution Control Act which could only be accommodated through legislative action...*

At no time is the RA [SMCRA regulatory authority] directly responsible for treatment of any pollutional discharges resulting from a proposed mining operation...¹¹

OSM has consistently acknowledged the inability of SMCRA, its implementing federal regulations and primacy state programs to achieve this “significant fundamental shift regarding liability.” For example, in responding to comments on proposed revisions to the federal mining regulations, OSM stated:

¹⁰ 73 FR 78970, December 24, 2008.

¹¹ Response dated June 18, 1991 of the federal Office of Surface Mining to Final Audit Report 91-655.

A State regulatory authority questioned whether in accepting a permittee's obligation for reclamation after forfeiture, the State or surety assumes the obligation for phase releases, water quality control, National Pollution Discharge Elimination System (NPDES) monitoring, and revegetation...***neither the regulatory authority nor the contractor assumes the liability of the permittee.***¹²

OSM has confirmed this interpretation in more recent rulemaking exercises:

We [OSM] are not the permittee, and we do not become the permittee when the permittee defaults on reclamation obligations, which means we do not assume the permittee's NPDES compliance duties.¹³

Under the federal regulations governing alternative bonding systems like those of West Virginia, OSM has found:

The regulations do not specifically require that the regulatory authority must treat water to NPDES effluent limits. The obligation rests with the permittee pursuant to the Clean Water Act...¹⁴

Fundamentally shifting an NPDES permittee's duties and responsibilities under the CWA and WV WPCA to the SRF, in addition to being contrary to the specific mandate that nothing in SMCRA supersede, amend, modify or repeal the CWA, is also potentially at odds with the federal requirements governing state implemented ABS programs. By removing an individual permit holder's responsibility to maintain compliance with any NPDES permit imposed effluent limitations, prior to the changes contained in SB 687,

¹² 48 FR 32956, July 19, 1983.

¹³ 72 FR 9629, March 2, 2007.

¹⁴ Letter dated January 15 1993 from the Office of Surface Mining to the West Virginia Department of Environmental Protection.

could have compromised the ability of its ABS to “provide a substantial economic incentive for the permittee to comply...” as required by 30 CFR 800.11(e)(2).

Specific Comments: Proposed Rule Changes

As previously noted, WVCA believes that several additional revisions are needed to West Virginia’s rules to fully implement the statutory changes contained in SB 687 and to implement the Legislature’s instructions regarding the adoption of corresponding federal requirements.

38 CSR 2.11.3.f.

In the current proposal WV DEP would retain this section regarding trusts for mining sites with “long-term pollutorial discharges.” This entire section should be deleted from the state’s mining rules.

Retention of the sections in the state’s mining regulatory program infers that it is the responsibility of the surface mining regulatory program to ensure compliance with the CWA, WV WPCA and specific NPDES permits. As noted in earlier comments regarding SB 687, this is clearly not the case and preserving any language making such a suggestion continues to place West Virginia’s regulatory program at odds with the CWA and SMCRA’s express instruction against amending, modifying, repealing, or superseding any CWA requirement.

Additionally, retaining this language is contrary to the specific changes contained in SB 687 regarding the SRF and its potential liability. As recognized by OSM, “states

could legally structure their [alternative bonding systems] to limit discharge treatment..."¹⁵ SB 687 has done that, consistent with OSM's previous determination that West Virginia's ABS exceeded the corresponding federal requirements for bonding:

Unlike the federal rules, paragraphs (c) and (d) of Subsection 12.4 [of the West Virginia regulations] require the Commissioner to use bond forfeiture proceeds and the Special Reclamation Fund (bond pool) to treat discharges from forfeited sites to meet effluent limitations. **Although there are no federal counterparts to these provisions**, the Secretary finds that they do not conflict with any Federal requirements or adversely impact other aspects of the program and they are therefore not inconsistent with SMCRA and the Federal regulations at 30 CFR 800.40 and 800.50 governing bond release and bond forfeiture.¹⁶

The SRF is an integral component of the state's ABS, and the Legislature has clearly limited its liability in SB 687 consistent with federal requirements under SMCRA and the CWA. Any state rule language on bonding such as 38 CSR 2.11.3.f that continues to suggest such an obligation is contrary to the statute and should be removed.

Moreover, the provisions of 38 CSR 2.11.3.f. also conflict with federal regulations governing bond release and termination of jurisdiction (see subsequent comments on 38 CSR 2.12.a.4).

38 CSR 2.12.a.4. and related subsections (previously codified at 38 CSR 12.2.e.)

WVCA believes these sections of the rule **must** be deleted to conform the state's mining regulatory program to the corresponding federal regulations and to comply with amendments to WV SCMRA made in SB 687.

¹⁵ Response dated June 18, 1991 of the federal Office of Surface Mining to Final Audit Report 91-655.

¹⁶ 55 FR 21324, May 23, 1990.

There is nothing remotely similar to the provisions of 38 CSR 2.12.a.4 in the equivalent federal regulations, and the provisions of the state rule are directly counter to the interpretation and implementation of OSM's regulations and SB 687.

For example, the provisions of 38 CSR 2.12.a.4 are in direct conflict with and do not conform to OSM's termination of jurisdiction rule, which expressly recognizes final bond release and termination of SMCRA jurisdiction over reclaimed mines where an area may require long-term treatment to meet applicable effluent limitations.¹⁷ As explained by OSM:

One commenter questioned how OSMRE will apply the rule to mining operations with post-closure drainage which will continue to require chemical and physical treatment to meet effluent limitations.

This rule does not affect the standard required for full bond release which requires full compliance with the applicable performance standards. In order for a release to be appropriate under such circumstances, it should include assurances which provide through a contract or other mechanism enforceable under other provisions of law to provide, for example, long-term treatment of an alternative water supply or acid discharge. When such assurances are provided, the failure of such maintenance following bond release is not sufficient reason to reassert regulatory jurisdiction under the regulatory program.

If, subsequent to bond release, a problem occurs related to inadequate maintenance, the contract or agreement would be enforceable through other provisions of law. Should such contract or agreement prove unenforceable, then the bond release would have been based on misrepresentation and jurisdiction should be reasserted.¹⁸

¹⁷ 30 CFR 700.11(d).

¹⁸ 53 FR 44356, November 2, 1988.

OSM's clarification that the termination of jurisdiction rule "does not affect the standard required for full bond release which requires full compliance with the applicable performance standards" signifies that ongoing treatment (and the associated costs with such treatment) is not an applicable performance standard that must be achieved for complete reclamation.

Unlike the state rules, the federal regulations do not mention "financial resources" and certainly not with respect to traditional SMCRA bonding requirements. Instead, the federal regulations speak in terms of contracts or other agreements for assuring treatment "under other provisions of law" (obviously not SMCRA or any state primacy program). **And clearly an NPDES permit and the resulting obligations under the CWA and WV WPCA constitute "mechanisms enforceable under other provisions of law" that provide the assurances that the treatment of the point source discharge will continue until such discharge complies, without treatment, with the effluent limitations set in any applicable NPDES permit.**

Much like the provisions of 38 CSR 2.11 (see previous comments), maintaining the language of 38 CSR 2.12.a.4 and its related subsections would be contrary to the language of WV SCMRA as modified in SB 687 by implying a liability to one part of the state's ABS (the SRF) that is now clearly limited by the plain wording of the statute.

Acknowledging the existence of the CWA, WV WVPCA and NPDES enforcement programs is consistent with the changes to WV SCMRA contained in SB 687 and the

conclusion that "Congress meant exactly what it said in [SMCRA], that where there is an overlap of regulation, the Surface Mining Act is not to be interpreted as altering in any fashion the Federal Water Pollution Control Act."¹⁹

38 CSR 2.12.b, 38 CSR 2.12.4.a.1, and 38 CSR 2.12.4.e.

In SB 687 the Legislature modified the bonding related sections of WV SCMRA to mirror, with a few exceptions, the wording of federal SMCRA. However, WV DEP has proposed to retain language in this rule section and its related subsections that do not match the corresponding federal regulations. These sections should be revised as appropriate to match the language in the federal program to mirror the changes to WV SCMRA.

38 CSR 2.11.e.

This provision has no parallel in the federal regulations and is contrary to the termination of jurisdiction regulations of OSM (see previous comments). Without specific, defined criteria, we question the ability of the agency to make such an evaluation that is anything but subjective. WVCA suggests the agency delete this provision from the state's regulatory program.

¹⁹ See generally *re Surface Mining Regulation Litigation*, 627 F.2d 1346, 1366 (D.C. Cir. 1980).

38 CSR 2.7.6

The existing state rule at 38 CSR 2.7.6.b. contains a reference to a planting plan prepared by registered professional forester. WVCA believes this requirement exceeds the corresponding federal regulations and the guidelines established by the Appalachian Regional Reforestation Initiative and should be deleted.

38 CSR 2.7.6.c.1 and 38 CSR 2.7.7.c.2

The current rules in both sections contain references to the soluble salt level of topsoil substitutes. These references are unnecessary and duplicative given the other technical requirements of the two sections and should be removed from the rule.

Conclusion

WVCA appreciates the efforts of WV DEP to revise the state's mining rules to provide the certainty and predictability that is so desperately needed to stabilize the coal industry in West Virginia. However, as we detail in our above comments, the changes stop short of achieving the clarity and confidence as it regards the WV SCMRA program's relationship to the CWA, WV WPCA and the NPDES permitting and enforcement process as sought by the Legislature. Instead of remedying the problems that have emanated from the meshing of the two programs, the proposed revisions maintain several provisions of the existing rule that will prolong this untenable situation.

To conform to the mandates of SB 687 and to stabilize the regulatory environment for the coal industry, WVCA encourages WV DEP to further revise the rule as described in these comments.

Respectfully Submitted,



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Vice-President**

cc: Legislative Rulemaking Review Committee

**Mr. Austin Caperton
Cabinet Secretary
West Virginia Department of Environmental Protection**

**Mr. Harold Ward
Director
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West Virginia Department of Environmental Protection**



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July 14, 2017

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Re: Proposed Changes to 38 C.S.R. 2

Dear Mr. Ward:

On behalf of the West Virginia Chapter of Sierra Club, the Ohio Valley Environmental Coalition, the West Virginia Highlands Conservancy, the West Virginia Rivers Coalition, and Appalachian Mountain Advocates, please accept these comments on the proposed changes to the West Virginia Department of Environmental Protection's Surface Mine Reclamation Rule. The federal Office of Surface Mining Reclamation and Enforcement's regulations require that changes to a state's regulatory program meet the requirements of the Surface Mining Control and Reclamation Act (SMCRA) and federal regulations, 30 C.F.R. § 732.17. We believe that certain provisions of the West Virginia Department of Environmental Protection's proposed Surface Mining Reclamation Rule fail to meet federal and state requirements, or are contrary to good public policy.

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1. WVDEP Has Not Justified the Proposed Elimination of the Definition of “Completion of Reclamation”

The proposed rule would remove the definition of “completion of reclamation,” which currently provides that reclamation is complete only when “all applicable effluent and applicable water quality standards are met.” 38 C.S.R. § 2-2.37. It is unclear why WVDEP is proposing to delete this definition, unless the agency intends to allow operators to complete reclamation without meeting all applicable effluent standards and limitations. Such an effort would be impermissible. Under W. Va. Code § 22-3-23(c)(3)(C), bond release is impossible, and hence reclamation is not complete, until the quality of untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to the Surface Mining Act. In other words, if mining led to water quality standards violations, those violations must be eliminated, and compliant discharges must be possible without treatment, prior to bond release. Existing W. Va. C.S.R. § 38-2-12.2.e and proposed revisions to § 38-2-12.3.a-4 make clear that bond release is not available so long as active or passive treatment is still required to comply with applicable effluent limitations and water quality standards, so we are puzzled as to why WVDEP would delete this definition. Alternatively, WVDEP could be deleting this definition in an effort to reduce their legal obligations upon bond-forfeiture to comply with effluent limitations and water quality standards. Such an effort would be ineffective because it would be inconsistent with the regulatory authority’s obligations under the federal and state surface mining acts and with WVDEP’s obligations as an operator under the Clean Water Act, as articulated in W. Va. Highlands Conservancy v. Huffman, 625 F.3d 159 (4th Cir. 2010). Please explain why this deletion is necessary and how it is consistent with the federal and state requirements that mining

operators (and the regulatory authority, in the event of bond forfeiture) comply with all effluent limitations and water quality standards.

2. Proposed Addition and Alteration of Language from the Surface Mining Blasting Rule

a. Proposed Changes Regarding Blasting Plans

In proposed rule § 38-2-6.2.c, which requires that the blasting plan minimize adverse impacts to the surrounding environment and occupied dwellings, the deletion of the metric “to the maximum extent technically feasible” leaves too much discretion to the operator and the regulatory authority to determine what minimization measures are enough. West Virginians who live near coal mining operations should be assured that every possible effort is being made to eliminate impacts on their property and their daily lives by blasting. Mere minimization is not enough; impacts must be minimized to the fullest extent possible.

Additionally, the proposed rule does not adopt and potentially eliminates the requirement of W. Va. C.S.R. § 199-1-3.2.d that the regulatory authority give close scrutiny to blasting plans where violations have occurred. That omission leaves West Virginians who live near mining operations with insufficient protection where there has been a documented failure of the operator to lawfully conduct blasting. Blasting is an inherently hazardous activity and it makes no sense to deregulate that activity in any way.

b. Proposed Changes Regarding Public Notice of Blasting Plans

In proposed rule § 38-2-6.3.a, the omission of the provision in the original language of § 199-1-3.3.a requiring a blasting notice to residents within seven tenths of a mile of a blasting site is inconsistent with W. Va. Code § 22-3-13a(a)(2) (2016), which affords residents within seven tenths of a mile of a blasting site on an operation larger than those defined in accordance with W. Va. Code § 22-3-13a(a)(1) (2016) the opportunity to have a pre-blast survey performed. This

WVDEP is not proposing to incorporate the qualification requirements for persons performing pre-blast surveys. See W. Va. C.S.R. § 199-1-3.9. Because WVDEP has not disseminated any proposed changes to the Surface Mining Blasting Rule, it is unclear how these proposed revisions to the Surface Mining Rule will interact with that rule. The omissions of requirements for qualifications for pre-blast surveyors from the Surface Mining Rule is extremely disconcerting, however, and arrogantly downplays the importance of the pre-blast survey to the protection of private property from the effects of surface mining, which is one of the primary goals of the Surface Mining Act. Elimination of minimum requirements for individuals qualified to conduct pre-blast surveys will undermine the public's confidence in the oversight of blasting related to surface mining, and will inevitably lead to an increase in conflicts and disputes about blasting damages. Accordingly, eliminating minimum qualifications for pre-blast surveyors is short-sighted and constitutes a dereliction of WVDEP's duty to protect the public from adverse impacts from blasting.

A requirement under the Surface Mining Blasting Rule that requires the Secretary to disseminate informational materials regarding pre-blast surveying and blasting to citizens has also been omitted in the proposed Surface Mining Rule. W. Va. C.S.R. § 199-1-3.10.e. If the intent of the omission of the requirement that WVDEP "make available informational materials educating citizens about pre-blast surveys and blasting" is to eliminate the agency's responsibility to do so, such an omission is simply egregious. Eliminating that duty belies WVDEP's disregard of the very real anxieties that West Virginians that live near blasting sites feel, and appears to be an effort to discourage West Virginians from exercising their rights to have a pre-blast survey conducted or from even understanding those rights in the first instance. There is little value in having a right to a pre-blast survey if no effort is made by WVDEP to

ensure that citizens understand that right. West Virginians affected by blasting from surface mining are already navigating a complex regulatory environment, and WVDEP's efforts to avoid even providing such West Virginians a map to that complexity is reprehensible. Indeed, it could be interpreted as motivated by a desire to reduce the number of pre-blast surveys performed in order to prevent West Virginians from being able to obtain compensation from legitimate damages from blasting. Consequently, we strongly object to the omission of the requirement presently set forth in 199 C.S.R. § 3.10.e from the proposed revisions to the Surface Mining Rule.

e. Proposed Changes Regarding Blasting Damage Claims

WVDEP's proposed changes in § 38-2-26.2 are problematic in at least two ways. First, WVDEP appears to be eliminating the requirement that blasting damage claims be investigated by a certified inspector, without indicating to whom those responsibilities would devolve or any indication that the persons conducting the investigations would have any expertise in the area. We understand that WVDEP is an agency of limited resources and its certified inspectors may be stretched thin, but that is no excuse for not ensuring that blasting claims are investigated by competent personnel. If agency resources are the motivation for this change, we implore WVDEP to work with OSMRE to obtain additional funding for inspectors. Paired with other changes to the blasting rule described above, we fear that this change indicates that WVDEP is taking less seriously its obligation to protect West Virginians from damage to health and home from blasting at coal mining operations and to ensure that such damages are properly compensated. Accordingly, we request that you retain the requirement that blasting claims be investigated by a certified inspector.

Second, to the extent that WVDEP insists on proceeding with this course, we believe that the provision needs substantial editing to clarify whom must perform the acts set out in §§ 26.2.a.1 through 26.2.a.3. We also strongly encourage WVDEP to include a provision requiring the inspection to be conducted in a reasonable time (within 5 business days for receiving a complaint) in order to ensure that a property owner who has suffered damage does not have to wait an inordinate amount of time before conducting repairs.

3. Proposed Changes to Insurance and Bonding Regulations

We support the alteration of proposed rule § 11.3.f.9, which requires that a bond remain in effect for the permit area required for water treatment in addition to the trust fund or annuity. This ensures proper reclamation of the area if treatment becomes unneeded and funds in the trust fund or annuity are depleted below levels to ensure the retirement and reclamation of the treatment system.

In proposed rule § 11.4.a.3, the WVDEP omits the current requirement that the amount of bond required to obtain a permit include the full reclamation cost of the initial area being affected. In light of the widespread violations by operators of contemporaneous reclamation requirements, WVDEP's removal of the requirement that increments be of sufficient size to provide for efficient and contemporaneous reclamation under a cumulative bond schedule in proposed rule § 11.4.a.3 seems ill-advised.

The WVDEP's elimination of the requirements regarding the Environmental Security Account for Water Quality emphasizes that the agency still lacks a meaningful way to deal with long-term or perpetual discharge from permitted coal mining operations. Perpetual acid-mine drainage remains a problem, and long-term or perpetual discharges of selenium and pollutants that cause elevated conductivity are increasing in frequency. Those pollutional discharges often

require long-term and expensive treatment technology, and could result in the complete collapse of WVDEP's existing bonding scheme. For example ERP Environmental Fund operates a Fluidized Bed Reactor to treat selenium discharges at the Ruffner Mine in Logan County, which is estimated to require \$3 to \$4 million per year in operation and maintenance expenses. The prior operator of the Ruffner Mine exited the mining business in bankruptcy, and the current operator may be in serious financial straits. If the current operator forfeits its bond, WVDEP would be required to operate and maintain the Fluidized Bed Reactor at an expense of \$3 to \$4 million per year. Such an expense would tax existing resources and jeopardize the solvency of WVDEP's bond pools. WVDEP may not wish to pursue the Environmental Security Account as a method of addressing the costs of long-term active pollution treatment cause by WVDEP's previously disastrous permitting decisions, but the agency must find some way to address those long-term liabilities before a bond-forfeiture completely wipes out WVDEP's pooled bond funds, including the Water Trust Fund.

In addition to the changes regarding bonding in the proposed rule, we also ask that WVDEP reconsider its existing self-bonding rules. There is currently a high risk of insolvency in the coal mining industry, which in turn leads to a high risk of unfunded obligations to complete reclamation in a bonded area. On August 5, 2016, the OSM issued a policy advisory encouraging regulatory authorities to "exercise caution before allowing any companies to self-bond." OSMRE Policy Advisory: Self-Bonding (Aug. 5, 2016), at 3. Given the gravity of the situation, we strongly recommend that WVDEP review and revise current self-bonding regulations.

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4. Proposed Changes Regarding the Replacement, Release, and Forfeiture of Bonds

a. Proposed Changes Regarding the Requirement to Release Bonds

We understand proposed rule § 12.2.a.4 to be a recodification of existing § 38-2-12.2.e. Considering the substantial existing liabilities for long-term water treatment, and the fact that permitted operations are creating long-term pollutorial discharges notwithstanding the prohibition against permitting such facilities, we encourage WVDEP to consider eliminating the exceptions to the prohibition on bond release at facilities where water treatment is occurring by deleting §§ 38-2-12.2.a.4.A and 12.2.a.4.B. Considering the low bond amounts required by West Virginia's alternative bonding system, and the motivation for operators to underestimate the true cost of their water treatment liabilities, as demonstrated by potential underreporting of those liabilities by Patriot Coal Corporation in the 2010 timeframe, it is difficult to see how a remaining bond could ever be adequate to assure long-term treatment costs are covered.

Furthermore, we are concerned with the apparent deletion of the requirement that there be no extant violations prior to bond release in proposed rule § 12.2.c.1. Considering the intransigent problem of unabated violations in West Virginia—a condition that should lead to bond forfeiture—WVDEP should not allow even Phase I bond release in the face of an unabated violation. Additionally, in light of the questionable success of many revegetation efforts, WVDFP should not eliminate the requirement in existing rule § 12.2.c.2.A that an applicant for Phase II bond release demonstrate at least two years of revegetation success prior to release. Finally, it is unclear why the WVDEP seeks to eliminate the language in existing rule § 12.2.d conditioning bond release on the completion of all coal extraction operations. Generally, considering the potential for bond forfeiture in this challenging coal market, the state should be making it more difficult to get bond release, not easier.

b. Proposed Changes Regarding the Forfeiture of Bonds

Proposed sections 12.4.b.1 and 12.4.b.2 are drafted in such a way that it is unclear as to who the actors are who must perform the specified acts (e.g., “Proceed to collect the forfeiture amount” and “Use funds collected from bond forfeiture to complete the reclamation plan”). whether acts specified are mandatory or discretionary, and whether they are exceptions to or additions to the duties set out in § 12.4.b.

Furthermore we respectfully request that WVDEP include language in proposed rule § 12.4.d to clarify that the agency understands that its obligations under the federal and state surface mining laws require it to comply with effluent limitations and water quality standards as part of its obligations to complete reclamation on the bonded area.

c. Proposed Omission of Section Regarding Water Quality Enhancement

WVDEP’s intent in deleting existing rule § 12.5 is unclear, particularly since cross-references to this provision remain in other portions of the proposed rule. If WVDEP is in any way attempting to evade its duties under federal and state mining and clean water laws to treat pollutional discharges from bond forfeiture sites to ensure compliance with effluent limitations and water quality standards or is attempting to deprive the legislature or Special Reclamation Fund Advisory Council or actuaries of information that would allow those bodies to make informed decisions about the solvency of the Special Reclamation fund, we strongly object to the deletion of this section and insist that it would be inconsistent with federal and state law.

5. Proposed Changes Regarding Effluent Limitations

The proposed alterations to § 14.5.b would remove the language prohibiting mining discharges that “violate effluent limitations or cause a violation of applicable water quality standards” and replace it with language requiring such discharges to “be made in compliance

with all applicable state and federal water quality laws and regulations.” These changes appear to indicate that the WVDEP is attempting to remove the requirement that mining discharges not cause violations of water quality standards.

If that is WVDEP’s intention, the new language is ineffective to carry it out. The proposed new language in § 14.5.b is identical to that in 30 C.F.R. § 816.42. The OSM approved that rule in 1982. 30 C.F.R. § 816.42, *approved*, 47 Fed. Reg. 47,216 (Oct. 22, 1982). At that time, OSM stated that the rule provided “that discharges must comply with all State and Federal water quality laws and regulations. This includes applicable water quality standards.” *Id.* at 47,220. In addition, the Supreme Court of Appeals of West Virginia held in 1996 that state surface mining regulations must be read in a manner consistent with federal regulations enacted in accordance with the federal Surface Mining Control and Reclamation Act. Charles Schultz v. Consolidation Coal Co., 197 W.Va. 375, 475 S.E.2d 467, 475-76 (1996). Thus, the proposed language must be read to require compliance with applicable water quality standards.

In the alternative, if the proposed language is somehow read or interpreted to allow noncompliance with water quality standards, it is illegal and pre-empted by federal law. WVDEP’s rules cannot be less stringent than, or inconsistent with, OSM’s rules. 30 C.F.R. § 732.15(a). OSM’s rule at 30 C.F.R. § 816.42 requires compliance with all applicable water quality standards, and WVDEP’s regulation therefore cannot be less stringent and allow noncompliance with water quality standards.

Furthermore, West Virginia cannot backslide on compliance with water quality standards. In 1982, both OSM and EPA found that West Virginia’s program was deficient because it did not require compliance with water quality standards. OSM threatened to terminate West Virginia’s state SMCRA program by “June 15, 1982, unless West Virginia submits by that date

copies of enacted regulations requiring that all water leaving the permit area meet Federal and State water quality statutes, regulations, standards, or effluent limitations.” 47 Fed. Reg. 20,119, 20,122 (May 11, 1982). In September of 1982, after West Virginia submitted “regulations to require that water leaving the permit area will meet all applicable Federal and State water quality standards for the river, stream, or drainway into which it is discharged.” OSM rescinded that threat and approved that portion of West Virginia’s program. 47 Fed. Reg. 39,821 (Sept. 10, 1982). EPA concurred that these West Virginia regulations were consistent with the Clean Water Act. *Id.* at 39, 822; *see also* 50 Fed. Reg. 28,342, 28,337 (July 11, 1985) (“EPA concluded that the West Virginia program demonstrates the legal authority, administrative capability, and technical conformity to the federal regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act”). Thus, both OSM and EPA have previously found that a requirement to comply with water quality standards is necessary to comply with SMCRA and the CWA. Indeed, OSM stated that “Congress intended that surface coal mining and reclamation operations should not proceed unless all applicable water quality standards are achieved and maintained.” 44 Fed. Reg. 14,902, 14,927 (Mar. 13, 1979). WVDEP therefore cannot remove the same provision that OSM and EPA both required to be included in the state program in 1982.

Finally, if WVDEP is intending to amend its regulations to ignore violations of water quality standards, it is sanctioning wholesale impairment of the state’s waters on a regional scale. A West Virginia federal district court held in four citizen enforcement cases that eight coal mines have violated the narrative permit condition in their NPDES permits by discharging high levels of ionic chemicals that have greatly increased stream conductivity and caused biological impairment in violation of West Virginia’s narrative water quality standard for biological

integrity. OVEC v. Elk Run Coal Co., 24 F. Supp. 3d 532 (S.D.W.Va. 2015) (four mines); OVEC v. Fola Coal Co. (Stillhouse), 82 F. Supp. 3d 673 (S.D.W.Va. 2015) (one mine); OVEC v. Fola Coal Co. (Leatherwood), 120 F. Supp. 3d 509 (S.D.W.Va. 2015) (two mines); OVEC v. Fola Coal Co. (Monoc), No. CV 2:15-1371, 2017 WL 2312478 (S.D.W.Va. 2017) (one mine). The same type of violations are occurring at many other West Virginia mines with large valley fills. EPA stated in 2011 that “nine out of every 10 streams downstream from surface coal mining operations were impaired based on a genus-level assessment of aquatic life.” EPA Memorandum re: Improving EPA Review of Appalachian Surface Coal Mining Operations Under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order (July 21, 2011), at iii, *citing* Pond et al., Downstream Effects of Mountaintop Coal Mining: Comparing Biological Conditions Using Family- and Genus-Level Macroinvertebrate Bioassessment Tools, *J. N. Am. Benthol. Soc.* 27(3): 717, 731 (2008) (“Ninety-three percent of the mined streams and none of the unmined streams were impaired using the preferred genus-level GLIMPSS”). Allowing these violations to go unaddressed and unremedied would be a clear violation of the CWA and SMCRA.

Without any legitimate reasons, WVDEP is trying to eliminate an existing program provision that requires a permit condition mandating compliance with water quality standards. It does not deny that coal mines with valley fills are violating water quality standards. It does not deny that the existing requirement is necessary to prevent violations of water quality standards. On the contrary, it wants to delete the program provision precisely because there are known water quality violations and because citizen enforcement of those violations has been effective.

The evidence of WVDEP’s concerted efforts to avoid the implementation and enforcement of narrative water quality standards is pervasive. West Virginia vigorously opposed

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Sent: Tuesday, July 18, 2017 7:08 AM
To: DEP Comments
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Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

I am concerned the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

It removes the definition of "completion of reclamation," which currently provides that reclamation is complete only when water quality standards are met. This deletion is inconsistent with the federal and state requirements that mining operators comply with all discharge limitations and water quality standards. Please explain why this deletion is necessary.

It removes the requirement that there be no violations prior to bond release. Considering the high costs of reclamation and the potential for bond forfeiture in this challenging coal market, the state should be increasing bond amounts and making it more difficult to get a bond release.

It removes the requirement that mining discharges not cause violations of water quality standards, making it appear that the proposed rule changes are an attempt to relieve coal companies from such violations. Allowing these violations to go unaddressed would be a clear violation of the Surface Mining Control and Reclamation Act and the Clean Water Act.

The proposed changes to 38 C.S.R. 2 give West Virginia residents the impression that the State is attempting to bypass enforcement of water quality standards to the favor of the mining industry and circumvent both citizen involvement and federal law. The proposed rule changes suggest WVDEP is not living up to adequately regulating the coal industry to protect the

environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Janet Hayes

Janeth.25419@gmail.com

215 Morningside Dr.

Falling Waters, West Virginia 25419

Anderson, Carol Y

From: Lyndsay Tarus <lyndsay@theallianceforappalachia.org>
Sent: Tuesday, July 18, 2017 11:39 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

I am concerned the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

It removes the definition of "completion of reclamation," which currently provides that reclamation is complete only when water quality standards are met. This deletion is inconsistent with the federal and state requirements that mining operators comply with all discharge limitations and water quality standards. Without addressing the root cause of contamination, our problems will only be exacerbated. Please explain why this deletion is necessary.

It removes the requirement that there be no violations prior to bond release. Considering the high costs of reclamation and the potential for bond forfeiture in this challenging coal market, the state should be increasing bond amounts and making it more difficult to get a bond release.

It removes the requirement that mining discharges not cause violations of water quality standards, making it appear that the proposed rule changes are an attempt to relieve coal companies from such violations. Allowing these violations to go unaddressed would be a clear violation of the Surface Mining Control and Reclamation Act and the Clean Water Act.

The proposed changes to 38 C.S.R. 2 give West Virginia residents the impression that the State is attempting to bypass enforcement of water quality standards to the favor of the mining industry and circumvent both citizen involvement and federal law. The proposed rule changes

suggest WVDEP is not living up to adequately regulating the coal industry to protect the environment and the health of impacted communities.

As we look toward new economic development opportunities on abandoned and forfeited mine sites, the opportunities are endless, but if and only if, we first address contamination issues that are hindering our progress towards safe water and healthy land base-- the very impetus for all sustaining life.

As coal companies falter with the decline of the industry, our communities are suffering not only economically but also and more importantly, with our health. Any attempt to weaken regulation standards is a clear step to alleviate the responsibility companies have to our communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Lyndsay Tarus

lyndsay@theallianceforappalachia.org

206 Forestview

Huntington, West Virginia 25705

Anderson, Carol Y

From: Rev.Dr. Jean Wright <info@actionnetwork.org>
Sent: Monday, July 17, 2017 10:25 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

I am concerned the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

It removes the definition of "completion of reclamation," which currently provides that reclamation is complete only when water quality standards are met. This deletion is inconsistent with the federal and state requirements that mining operators comply with all discharge limitations and water quality standards. Please explain why this deletion is necessary.

It removes the requirement that there be no violations prior to bond release. Considering the high costs of reclamation and the potential for bond forfeiture in this challenging coal market, the state should be increasing bond amounts and making it more difficult to get a bond release.

It removes the requirement that mining discharges not cause violations of water quality standards, making it appear that the proposed rule changes are an attempt to relieve coal companies from such violations. Allowing these violations to go unaddressed would be a clear violation of the Surface Mining Control and Reclamation Act and the Clean Water Act.

The proposed changes to 38 C.S.R. 2 give West Virginia residents the impression that the State is attempting to bypass enforcement of water quality standards to the favor of the mining industry and circumvent both citizen involvement and federal law. The proposed rule changes suggest WVDEP is not living up to adequately regulating the coal industry to protect the

environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Rev.Dr. Jean Wright
revdrwright1@gmail.com
12104 Greenway ct
Fairfax, Virginia 22033

Anderson, Carol Y

From: Charles Brabec <chuck@thebrabecs.com>
Sent: Thursday, July 13, 2017 2:51 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

I am concerned the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

It removes the definition of "completion of reclamation," which currently provides that reclamation is complete only when water quality standards are met. This deletion is inconsistent with the federal and state requirements that mining operators comply with all discharge limitations and water quality standards. Please explain why this deletion is necessary.

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The proposed changes to 38 C.S.R. 2 give West Virginia residents the impression that the State is attempting to bypass enforcement of water quality standards to the favor of the mining industry and circumvent both citizen involvement and federal law. The proposed rule changes suggest WVDEP is not living up to adequately regulating the coal industry to protect the

environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Charles Brabec

chuck@thebrabecs.com

PO Box 273

Canvas, West Virginia 26662

Anderson, Carol Y

From: Charles Brabec <chuck@thebrabecs.com>
Sent: Thursday, July 13, 2017 2:51 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Charles Brabec

chuck@thebrabecs.com

PO Box 273

Canvas, West Virginia 26662

Anderson, Carol Y

From: Ned Savage <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 2:51 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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I am concerned the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Ned Savage

nedsavage@gmail.com

8094 Upper Craig Creek Rd.

Catawba, Virginia 24127

Anderson, Carol Y

From: Jennifer Hall <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 2:54 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Jennifer Hall

solitarydragon77@gmail.com

34 Pebblehill Park

Greeneville, Tennessee 37745

Anderson, Carol Y

From: Courtney Ostaff <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 3:29 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Courtney Ostaff

ostaff1@yahoo.com

337 Dawson Rd

Morgantown, West Virginia 26501

Anderson, Carol Y

From: James Dixon <james@harehill.com>
Sent: Thursday, July 13, 2017 3:56 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

James Dixon

james@harehill.com

206 W. Washington Ave.

Terra Alta, West Virginia 26764

Anderson, Carol Y

From: Timothy Munsey <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 3:31 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Timothy Munsey

iew37@yahoo.com

613 Neal Street

Parkersburg, West Virginia 26101

Anderson, Carol Y

From: Jerry Rivers <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 3:59 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Jerry Rivers

jerry.rivers13@yahoo.com

8-Gombert place

Roosevelt, New York 11575

Anderson, Carol Y

From: Francis D. Slider <fslider@frontier.com>
Sent: Thursday, July 13, 2017 4:08 PM
To: DEP Comments
Subject: re: comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

I am deeply concerned that the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

It removes the definition of "completion of reclamation," which currently provides that reclamation is complete only when water quality standards are met. This deletion is inconsistent with the federal and state requirements that mining operators comply with all discharge limitations and water quality standards. Please explain why this deletion is necessary.

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Francis D. Slider

fslider@frontier.com

239 Fluharty Rd

Middlebourne , West Virginia 26149

Anderson, Carol Y

From: Sam Golston <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 4:08 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Sam Golston

sam_golston@hotmail.com

132 cheat river acres

Elkins WV, West Virginia 26241

Anderson, Carol Y

From: Cynthia Ellis <cdellis@wildblue.net>
Sent: Thursday, July 13, 2017 4:16 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

I am concerned the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Cynthia Ellis

cdellis@wildblue.net

3114 Steel Ridge Rd

Red House, West Virginia 25168

Anderson, Carol Y

From: Barbara Steinke <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 4:20 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Barbara Steinke

steinagel@aol.com

PO Box 75025

Charleston, West Virginia 25375

Anderson, Carol Y

From: Robert A. Mertz <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 4:23 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

Once again the forces for short term profits for the few are trying to undermine the legal protections of our planet's life support systems. Not only do we need to keep Earth's carbon deposits safely in the ground, to minimize the buildup of global warming carbon dioxide, but we also must protect the living plants and the natural environment that is the ultimate infrastructure of Earth's life support systems. We must strengthen, not weaken our regulations of the extractive industries that risk the wellbeing and ultimate sustainability of the planet upon which my children and grandchildren live.

I am concerned the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

It removes the definition of "completion of reclamation," which currently provides that reclamation is complete only when water quality standards are met. This deletion is inconsistent with the federal and state requirements that mining operators comply with all discharge limitations and water quality standards. Please explain why this deletion is necessary.

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Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Robert A. Mertz

no1ramertz@gmail.com

1205 Mulberry Ridge

Spencer, West Virginia 25276-8561

Anderson, Carol Y

From: Susannah Mathews <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 5:15 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Susannah Mathews

browndogband@yahoo.com

3 Bluegrass Village

Morgantown, West Virginia 26501

Anderson, Carol Y

From: Edward Lynch <edlynchwv@icloud.com>
Sent: Thursday, July 13, 2017 5:15 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Edward Lynch

edlynchwv@icloud.com

128 Willow Spring Drive

Wellsburg, West Virginia 26070-9756

Anderson, Carol Y

From: Christopher Craig <ccraig@laurellodge.com>
Sent: Thursday, July 13, 2017 5:04 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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The proposed changes to 38 C.S.R. 2 give West Virginia residents the impression that the State is attempting to bypass enforcement of water quality standards to the favor of the mining industry and circumvent both citizen involvement and federal law. The proposed rule changes suggest WVDEP is not living up to adequately regulating the coal industry to protect the

environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Christopher Craig

ccraig@laurellodge.com

PO Box 1011

Harpers Ferry, West Virginia 25425

Anderson, Carol Y

From: Rachel McGuire <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 4:24 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

I am concerned the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Rachel McGuire

rachel.erin4@gmail.com

PO Box 131

Danese, West Virginia 25831

Anderson, Carol Y

From: Barbara Brown <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 5:20 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

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suggest WVDEP is not living up to adequately regulating the coal industry to protect the environment and the health of impacted communities.

Why would these changes be of long term benefit to our state? What uptick there is be in coal production is already in force. These changes will do nothing to improve water quality for recreation, fishing and the health of water for our citizens.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Barbara Brown

bjbrnwv@gmail.com

95 Hartford Street

Morgantown, West Virginia 26501

Anderson, Carol Y

From: Art Glick <omb00900@mail.wvnet.edu>
Sent: Thursday, July 13, 2017 5:19 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Art Glick

omb00900@mail.wvnet.edu

638 Glicks Road

Renick, West Virginia 24966

Anderson, Carol Y

From: John Brewer <brwrj1@msn.com>
Sent: Friday, July 14, 2017 9:53 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

I am concerned the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

John Brewer

brwj1@msn.com

409 Aurora Street

Marietta, Ohio 45750

Anderson, Carol Y

From: Penny Manion <info@actionnetwork.org>
Sent: Friday, July 14, 2017 10:57 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Penny Manion

pennymanion@yahoo.com

PO Box 1306

Shepherdstown , West Virginia 25443

Anderson, Carol Y

From: David Lillard <david@lillards.com>
Sent: Friday, July 14, 2017 9:58 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

These changes would reduce the bonding and reclamation requirements for coal companies to the detriment of taxpayers and public health. We're already saddled with cleanup costs in perpetuity for abandoned mines; this would be a giant step backward in accountability.

It removes the definition of "completion of reclamation," which currently provides that reclamation is complete only when water quality standards are met. This deletion is inconsistent with the federal and state requirements that mining operators comply with all discharge limitations and water quality standards. Please explain why this deletion is necessary.

It removes the requirement that there be no violations prior to bond release. Considering the high costs of reclamation and the potential for bond forfeiture in this challenging coal market, the state should be increasing bond amounts and making it more difficult to get a bond release.

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Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

David Lillard

david@lillards.com

526 Spring Warbler Way

Shepherdstown, West Virginia 25443

Anderson, Carol Y

From: Rachael Pappano <info@actionnetwork.org>
Sent: Friday, July 14, 2017 11:58 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Rachael Pappano

shamrock.magic@yahoo.com

330 River Rd.

Mattawamkeag, Maine 04459

Anderson, Carol Y

From: Jenni Kovich <jjkov1ch-charity@live.com>
Sent: Friday, July 14, 2017 2:07 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Jenni Kovich

jjkov1ch-charity@live.com

50 Dud Bennett Rd

Leon, West Virginia 25123

Anderson, Carol Y

From: tom harris <info@actionnetwork.org>
Sent: Friday, July 14, 2017 9:50 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

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Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

tom harris

mchazy77@hotmail.com

17 gate ct

burlington, New Jersey 08016

Anderson, Carol Y

From: Michael Klausing <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 10:49 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Michael Klausing

mike_klausing@hotmail.com

624 Cross Lanes Dr Apt 11

Nitro, West Virginia 25143

Anderson, Carol Y

From: Rhonda Marrone <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 9:31 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Rhonda Marrone

rmm164@yahoo.com

939 Somerset dr

Charleston, West Virginia 25302

Anderson, Carol Y

From: kat cooper <info@actionnetwork.org>
Sent: Friday, July 14, 2017 12:00 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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kat cooper

katcooper304@yahoo.com

2928 mtn lake rd

hedgesville, West Virginia 25427

Anderson, Carol Y

From: Mary Scott <info@actionnetwork.org>
Sent: Thursday, July 13, 2017 11:54 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Mary Scott

marykscott02@aol.com

152 CHRISTOPHER DR

Kitty Hawk, North Carolina 27949

Anderson, Carol Y

From: Lori Rose <info@actionnetwork.org>
Sent: Friday, July 14, 2017 3:04 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2

Lori Rose

fishnlec6969@yahoo.com

461 19th St.

Dunbar, West Virginia 25064

Anderson, Carol Y

From: JB Witten <info@actionnetwork.org>
Sent: Friday, July 14, 2017 8:09 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

JB Witten

JBWitten@aol.com

578 Faulkner Rd. RR 1 BOX 113

Elkins, West Virginia 26241-9713

Anderson, Carol Y

From: Melinda Russell <info@actionnetwork.org>
Sent: Friday, July 14, 2017 8:47 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Melinda Russell

mrussell306@gmail.com

216 Hemlock Ave E

Alderson, West Virginia 24910

Anderson, Carol Y

From: mike sayre <info@actionnetwork.org>
Sent: Sunday, July 16, 2017 7:02 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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Anderson, Carol Y

From: Louise Miller <info@actionnetwork.org>
Sent: Friday, July 14, 2017 8:46 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

Louise Miller

lcm29mowv@gmail.com

578 Faulkner Rd

Bowden, West Virginia 26241

Anderson, Carol Y

From: G. Pajl Richter <info@actionnetwork.org>
Sent: Friday, July 14, 2017 9:03 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

Harold Ward,

Please accept these comments on the proposed changes to the WVDEP's Surface Mine Reclamation Rule.

I am concerned the proposed changes to this rule would weaken compliance with water quality standards and reduce the bonding and reclamation requirements for coal companies in the following ways:

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It removes the requirement that there be no violations prior to bond release. Considering the high costs of reclamation and the potential for bond forfeiture in this challenging coal market, the state should be increasing bond amounts and making it more difficult to get a bond release.

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The proposed changes to 38 C.S.R. 2 give West Virginia residents the impression that the State is attempting to bypass enforcement of water quality standards to the favor of the mining industry and circumvent both citizen involvement and federal law. The proposed rule changes

Anderson, Carol Y

From: kerren hall <info@actionnetwork.org>
Sent: Monday, July 17, 2017 10:09 AM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

kerren hall

kerrengh@yahoo.com

167 hess re

fayetteville, West Virginia wv

Anderson, Carol Y

From: Jay Mahoney <jmahoney59@frontier.com>
Sent: Monday, July 17, 2017 4:22 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

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Anderson, Carol Y

From: William Johnson <info@actionnetwork.org>
Sent: Tuesday, July 18, 2017 11:07 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

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Anderson, Carol Y

From: Jordan Lindsay <info@actionnetwork.org>
Sent: Monday, July 17, 2017 12:18 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

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Anderson, Carol Y

From: Maria Gunnoe <maria_gunnoe@frontier.com>
Sent: Monday, July 17, 2017 6:00 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

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Anderson, Carol Y

From: John Endicott <info@actionnetwork.org>
Sent: Monday, July 17, 2017 6:48 PM
To: DEP Comments
Subject: Comments on 38 C.S.R. 2

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environment and the health of impacted communities.

Thank you for the opportunity to comment on the proposed changes to 38 C.S.R. 2.

John Endicott

johnalleycat@gmail.com

2043 19th. Ave.

San Francisco, California 94116

To Whom It May Concern;

Please do not weaken the "Surface Mining Reclamation Rule" and continue to protect our water from coal mining run off.

Our future and our children's future depends on your wise decisions TODAY!!! Sincerely,
Martha Wine