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

Form #3

DO NOT MARK IN THIS BOX

1987 AUG 28

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

AGENCY: West Virginia Department of Energy TITLE NUMBER: 38

CITE AUTHORITY West Virginia Code 22-1-15 and 22A-3-4

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Surface Mining Reclamation Regulations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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

Roger T. Hall

Roger T. Hall
Administrator

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Surface Mine Reclamation Regulations

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency West Virginia Department of Energy Address 1615 Washington Street, East Charleston, WV 25311

| 1. Effect of Proposed Rule | ANNUAL Increase | ANNUAL Decrease | FISCAL YEAR Current | FISCAL YEAR Next | FISCAL YEAR Thereafter |
|---|---|---|---|---|---|
| Estimated Total Cost | $ -0- | $ -0- | $ -0- | $ -0- | $ -0- |
| Personal Services | | | | | |
| Current Expense | | | | | |
| Repairs and Alterations | | | | | |
| Equipment | | | | | |
| Other | | | | | |

2. Explanation of above estimates:

The proposed rule will not result in any increase or decrease in cost to the state.

3. Objectives of these rules:

The purpose of this rule is to amend existing regulations to confer to change in federal regulations and recent court decisions.

DATE: August 28, 1987

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Energy

LEGISLATIVE RULE TITLE: Surface Mining Reclamation Regulations

1. Authorizing statute(s) citation West Virginia Code 22-1-15 and 22A-3-4

2. a. Date filed in State Register with Notice of Hearing: May 29, 1987

b. What other notice, including advertising, did you give of the hearing?

See attached listing

c. Date of hearing(s): July 1, 1987

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received ____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

September 28, 1987

f. Name and phone number of agency person to contact for additional information:

Roger T. Hall, Administrator, West Virginia Department of Energy 348-3500

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

   a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

   N/A

   b. Date of hearing: _____

   c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

   N/A

   d. Attach findings and determinations and reasons:

   Attached N/A

3D. INSURANCE

FOR ACTIVE SURFACE MINING OPERATIONS

The minimum amount of insurance coverage for bodily injury shall be $300,000 for each occurrence and $500,000 aggregate; and minimum insurance for property damage shall be $300,000 for each occurrence and $500,000 aggregate with no exclusion for landslides and water loss; Provided, that blasting insurance will continue as long as blasting activities occur. Provided further, that the policy shall include a rider requiring the insurer notify the director whenever substantive changes are made in the policy including any termination or failure to renew.

REASONS:

1. CORRESPONDS TO APPROVED, ACCEPTED DEFINITION OF "ACTIVE SURFACE MINING OPERATION" (2.08)

2. CONSISTENT WITH PRACTICES AND PROCEDURES OF INSURANCE COVERAGES FOR COAL MINING OPERATIONS.

3. BOND CONTINUES THROUGHOUT REVEGETATION TIME AND SHOULD OFF-SITE PROBLEMS DEVELOP, LIABILITY ACCRUES TO PERMITEE FOR SETTLEMENT.

3M RENEWALS

OF AN ACTIVE SURFACE MINING OPERATION

3M.01 Application - Application for renewal shall be on forms prescribed by the director, shall be filed in accordance with ~~20-6-10(c)~~ 22A-3-8(c) of the Act, AND 22A-5-10 and shall contain the following:

(a) The name and address of the permittee, location of the permit area including the county, the magisterial district, the nearest post office and the permit number;

(b) A statement that the terms and conditions of the preplan are being satisfactorily met;

(c) A statement that the operation is in compliance with the applicable environmental protection standards of the Act and these rules and regulations;

(d) A statement that the performance bond and insurance policy for the operation will continue in effect;

(e) A progress map of the same size and scale as the proposal map;

(f) A statement that the information set forth in the form and progress map is true and accurate;

(g) A notarized signature of the principal officer of the permittee in accordance with section 3K; and

(h) A copy of a public notice of permit renewal and proof of publication in accordance with Section 20 of the Act and Section 3B.02 of these regulations.

REASONS:

① RECONCILE ADMINISTRATIVE BURDENS OF UNNECESSARY FORMS PROCESSING.

② COMPLETE RENEWALS NOT NECESSARY FOR OPERATIONS ALREADY COMPLETED.

③ CORRESPONDS DIRECTLY WITH ACCEPTED DEFINITION OF "ACTIVE SURFACE MINING OPERATION" (2.08)

AT A

DELETE 2.22 Coal Remining Operation means a coal mining operation (which) DELETE begins at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

~~2.21.~~ 2.23 Coarse Coal Refuse means coal processing waste predominately within a size range greater than the #28 sieve size.

~~2.22~~ 2.24 Collateral Bond means an indemnity agreement in sum certain deposited with the director executed by the permittee ad supported by one or more of the following:

(1) The deposit of cash in one or more federally insured accounts, payable only to the director upon demand;

(2) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and in the possession of, the director;

(3) Negotiable certificates of deposit, payable only to the director, and in his possession;

(4) An irrevocable letter of credit of any bank organized or authorized to transact business in the State of West Virginia, payable only upon presentation by the director;

(5) A perfected, first-lien security interest in real or personal property, in favor of the director; or

(6) Investment-grade rated securities, having the highest rating issued by a nationally recognized securities rating service, endorsed to the order of, and in the possession of, the director, excluding all issues of the type traded on a commodity exchange such as contracts for future delivery of goods.

~~2.23~~ 2.25 Combined Coal Refuse means a mixture of coarse coal refuse and dewatered fine coal refuse.

~~2.24~~ 2.26 Combustible Materials means organic materials that are capable of burning by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

~~2.25~~ 2.27 Common-size Comparative Balance Sheet means item amounts from a number of the permittee's or applicant's successive yearly balance sheets arranged side by side in a single statement followed by commonsize percentages whereby: (1) the asset total is assigned a value of 100 percent; (2) the total of liabilities and owner equity is also assigned a value of 100 percent; and (3) each individual asset, liability, and owner equity item is shown as a fraction of one of the 100 percent totals.

~~2.26~~ 2.28 Common-size Comparative Income Statement means an operator's income statement amounts for a number of successive yearly periods arranged side by side in a single statement followed by commonsize percentages whereby net sales are assigned a 100 percent value, and then each statement item is shown as a percentage of net sales.

~~2.27~~ 2.29 Community or Institutional Building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

~~2.28~~ 2.30 Compaction means the densification of a soil or soil-like material by means of mechanical manipulation.

~~2.29 Complete Application means an application which contains all required maps, plans, designs and other application materials excluding bond.~~

~~2.30~~ 2.31 Completion of Reclamation means that the total bond has been released after approval of the final inspection report provided for in these regulations.

~~2.31~~ 2.32 Construction Pore Pressures means water pressures generated in foundation soils or embankments due to compression by loads imposed by construction of an embankment or other structure.

IS THIS FEDERAL DEFINITION?

2.33 Cumulative Impact means the hydrologic impact that results from the cumulation of flows from all coal mining sites to common channels or aquifers in a cumulative impact area. Individual mines within a given cumulative impact area may be in full compliance with effluent standards and all other regulatory requirements, but as a result of the comingling of their off-site flows, there is a cumulative impact. The Act does not prohibit cumulative impacts but does emphasize that they be minimized. ~~When the magnitude of cumulative impact exceeds threshold limits or ranges as predetermined by the Department, they constitute material damage.~~

What about negative impacts from other industries

needed because definition does not point out where a cumulative impact

DELETE DUPLICATIVE UNNECESSARY

2.34 Cumulative Impact Area means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through Phase II bond release of: (a) the proposed operation; (b) all existing operations; (c) any operation for which a permit application has been submitted to the Commissioner, and; (d) all operations required to met diligent development requirements for leased Federal coal for which there is actual mine development information available.

relevant to us, need discuss w/ OSM

~~2.56~~ 2.60 Historic Lands means important historical, cultural and scientific areas that could be irreparably damaged or destroyed by surface mining operations. Examples of historic lands include sites that have been listed on the national register of historic places, national historic landmarks and sites for which historic designation is pending.

2.61 Hydrologic Balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation and changes in ground and surface wter levels and storage.

~~2.58~~ 2.62 Hydrologic Regime means the entire state of water movement in a given area.

2.63 Hydrological ~~Isolated~~ Operation means a surface mining operation where hydrologic impacts are negligible or are dissipated before reaching points in the system where they are additive to hydrologic impacts of other surface mining operations.

~~2.59~~ 2.64 Impoundment means a closed basin constructed for the retention of water, sediment or waste.

2.65 Incidental Boundary Revision means (a) an extension of the permit area that is necessary for reasons unforeseen at the time the original permit application was prepared and which is necessary for the continuance of that permitted operation; or (b) the deletion of bonded acreage which is double-bonded by a valid permit and for which full liability is assumed in writing by the successive permittee.

~~2.60~~ 2.66 Infiltration means the flow or movement of water through the surface of soil or soil like material into the ground.

~~2.62~~ 2.67 Inspection shall mean a visual review of prospecting, surface or other mining operations to insure complete compliance with any applicable law, rule, regulation or permit conditions under jurisdiction of the director.

~~2.61~~ 2.68 Intermittent Stream means a stream or portion of a stream that flows continuously for at least one month of the calendar year as a result of ground water discharge or surface runoff.

~~2.63~~ 2.69 Irreparable Damage to the Environment means any damage to the environment that cannot be corrected by actions of the operator.

~~2.64~~ 2.70 Leachate means a liquid that has percolated through soil, rock or waste and has extracted dissolved or suspended materials.

~~2.65~~ 2.71 Lightly Buffered Stream means any stream or its tributaries that contains less than 15 PPm methyl orange alkalinit to pH 4.5) and a conductivity of less than 50 micro MHO.

2.92 2.99 Retained Earnings means stockholder's equity that has arisen from retained assets from earnings in the business. This shall include only earnings from normal operations and not gains from such transactions as the sale of plant assets or investments.

2.93 2.100 Return on Investment means the relation of net profit for the last yearly period to ending net worth.

2.94 2.101 Safety Factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

2.95 2.102 Sediment means solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water gravity or ice and has come to rest on the earth's surface.

2.96 2.103 Sediment Control Structure means a structure designed, constructed and maintained in accordance with Section 4B.05 of these regulations.

2.97 2.104 Self-Bond means an indemnity agreement in a sum certain payable to the director, executed by the permittee and by each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of his authority as an officer or ownership of all or a significant part of the permittee, and supported by agreements granting the director a security interest in real or personal property pledged to secure performance by the permittee.

2.98 2.105 Significant Aquifer means a zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use (or uses).

DELETE — PRACTICALLY ANY FORMATION HAS SOME POTENTIAL TO "STORE" — MUST BE DIRECTED TO USING

2.99 2.106 Slope Protection means any measures taken to control erosion on slopes.

2.100 2.107 Slope Stability means the degree of safety relative to the development of a landslide in the slope, as defined by one or more standard engineering methods of analysis.

2.101 2.108 Spoil means overburden that has been removed during surface coal mining operations.

2.102 2.109 Stabilize means to control movement of soil, spoil piles or areas of disturbed earth by modifying physical or chemical properties.

2.103 2.110 Standard Engineering means sound engineering practice based upon the technology currently available to the engineering profession.

2.104 2.111 Stoniness means a characteristic of earth, overburden or spoil reflecting its relative proportion of sizeable aggregate content as opposed to its sand, silt, clay or rock fragment content.

Original wording identical to Fed. definition

3B. ADVERTISEMENT

3B.01 Surface Mine Application Number - Prior to the publication of the advertisement for a surface mining permit, the applicant shall submit an administratively complete surface mining application and obtain a surface mining application (SMA) file number. Each such SMA number shall be valid for one year.

ADD: "SIGNIFICANTLY"

3B.04 Readvertisement

(a) When a Surface Mine Application (SMA), which has been advertised once a week for four successive weeks, has been determined by the commissioner to have had changes effecting the method of operation, the reclamation plan, and/or the original advertisement, then he shall cause a new advertisement to be published one time with a 10-day public comment period in accordance with 3B.02(a), (b), ~~and~~ (c) of these regulations.

ADDITIONAL COMMENT PERIOD MUST BE LIMITED TO THE CHANGES ONLY

(b) Permits which are being renewed or significantly revised must be advertised in accordance with ~~3B.02 of the~~ regulations and with Section 22A-3-9(a)(6) of the Code of West Virginia.

3B.05 Renotification - A renotification letter shall be sent to all commentors of a surface mine application (SMA) when a determination has been made by the commissioner that readvertisement is required under regulation 3B.04.

3G.02 Maps

(o) the areal distribution of aquifers (SIGNIFICANT, IF ANY,) for the proposed permit and adjacent areas.

(p) the location and depth of all oil and gas wells within the proposed permit area must be shown for both surface and underground mines.

3G.03 Cross Sections - The application shall contain cross-sections which accurately depict:

(a) the existing premining surface configuration and the final surface configuration that will be achieved as proposed in the reclamation plan and/or as required by these regulations.

(b) vertical distribution of aquifers (SIGNIFICANT, IF ANY,) with seasonal differences in head shown if available for the proposed permit area.

6A.02 Hydrologic Information and Analysis - The application shall contain a statement describing the probable hydrologic consequences of the mining operations, both ~~on and off the mine site~~ the permit and adjacent areas with respect to the hydrologic balance. Modeling techniques may be included as part of the application. The latitude, longitude and elevation should be shown for each surface or groundwater sampling point for baseline information. Water sampling and analysis shall be in accordance with OSM approved methods. All applications for permit revisions must be reviewed by the commissioner to determine whether a new or updated PHC determination or cumulative hydrologic impact assessment (CHIA) should be prepared.

(a) Baseline Ground Water Information

1. The location, ownership and use (if any) of known existing wells, springs and other groundwater resources including discharges from other active or abandoned mines within the proposed permit and adjacent areas in sufficient numbers to allow the applicant to make a reasonable approximation of the baseline groundwater conditions and use;

3. ~~For significant aquifers~~, groundwater quantity descriptions including discharge rates or useage and depth of water under seasonal conditions in each water-bearing stratum above the coal seam and ~~each potentially impacted water-bearing stratum~~ below the coal seam. Where deemed feasible and appropriate by the commissioner, an operator may calculate water useage for water status discharge determination; and

(b) Baseline Surface Water Information

1. The name, location, ownership and description of ~~streams into which water will be discharged~~ all surface water bodies in the permit and adjacent areas;

2. Water quality descriptions including information on total suspended solids, total dissolved solids, specific conductance, pH, acidity, alkalinity, sulfates, total iron and total manganese sufficient to demonstrate seasonal variation; Provided, that correlation data from other monitoring which does not include one or more of the above parameters may be accepted; Provided further, that limited validation samples may be required;

3. Water quantity descriptions including information on seasonal flow rates, variation and water useage; and

4. If the determination of the probable hydrologic consequences (PHC) indicates that a currently used or significant surface water resource (including all lightly buffered streams) is likely to be ~~adversely impacted~~ contaminated, diminished or interrupted, additional information shall be provided on the flood flows, base flows, and other characteristics or information as necessary to fully evaluate such probable hydrologic consequences or to plan remedial and reclamation activities such as water availability, alternative water sources and evaluation of suitability for both the premining and the approved post mining land uses.

(d) The applicant ~~may~~ shall submit all available data and analysis ~~relevant to~~ described in 6A.02(b)(4)(c) for the cumulative hydrologic impact assessment with the application.

(e) In some cases, the PHC may serve as the CHIA if there is no previously existing mining within that particular hydrologic regime's impact area. Otherwise, the regulatory authority shall perform a separate cumulative hydrologic impact assessment and evaluation of the PHC for the permit area and PHC's found within the cumulative impact area. This evaluation shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

6A.03 Geology - The application shall contain ~~a description of the geology in accordance with 10(a)(13) and (14), and 11(a)(12) of the Act for the permit area:~~ the following geologic and related information:

~~(a) Chemical analyses shall, unless otherwise provided by the director or by law or regulation, be determined by using standard procedures found in EPA Manual 600/2-78-054 (Field and Laboratory Methods Applicable to Overburden Minesoils). Such analysis shall include pyritic sulphur in the coal seam.~~

(a) Geologic cross sections, maps or plans of the proposed affected area, including the actual area to be mined, prepared by or under the direction of and certified by a person approved by the commissioner, showing pertinent elevation and location (latitude and longitude) of test borings or core samplings, where required by the commissioner, and depicting the following information: (A) the nature and depth of the various strata or overburden including geologic formation names and/or geologic members; (B) the elevation location of subsurface water, if encountered, and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) information concerning the areal and structural geology of both the proposed permit and adjacent areas, down to the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer which may be adversely impacted below the lowest coal seam to be mined, will be included in the permit application. Areal geology may include information such as mapped outcrop locations shown on a 7-1/2 minute United States Geological Survey (U.S.G.S.) topographic map, areal photographs, and published geologic reports for the area of concern. Structural geology may include mapped lineament traces from areal photography or topographic maps and any published structural geologic reports for the area of concern; (I) areal and vertical distribution of aquifers with seasonal differences in head and the name(s) of the stratum (or strata) which the water is found; (J) location and depth of all oil and gas wells within the proposed permit area for both surface and underground mines.

6B.06 Monitoring Requirements

(a) Surface Water Monitoring

~~1. All water discharged from the permit area shall be sampled and analyzed and otherwise monitored in accordance with the Clean Water Act of 1977 and all applicable standards of teh NPDES program and a monthly report of all measurements shall be submitted to the director; Provided, that all violations of effluent standards shall be reported to the directer within five (5) days of receipt of analytical analysis.~~

1. Surface water monitoring plans are to be included in the permit application and will be based on the PHC determination and baseline hydrologic and geologic information. These plans shall identify monitoring site locations, quantity and quality parameters, sampling frequency, and describe how the data may be used to determine the impact, if any, of the operation on the hydrologic balance both the permit and adjacent areas. Monitoring quality parameters should include but not exclusive to total dissolved solids or specific conductance corrected at 25°C, total suspended solids, flow measurements, pH, acidity, alkalinity, total iron and total manganese. The selection of these parameters must be based on current and approved post mining land uses and all hydrologic balance protection objectives.

~~1.~~ 2. All water discharged from the permit area shall be sampled and analyzed and otherwise monitored in accordance with the Clean Water Act of 1977 and all applicable standards of the NPDES program and a monthly report of all measurements shall be reported to the commissioner; Provided, that all violations of effluent standards shall be reported to the commissioner within five (5) days of receipt of analytical analysis.

~~2.~~ 3. Where any discharge from the permit area requires treatment during the mining operation in order to meet the water quality standards set forth in the NPDES regulations, surface water monitoring of such discharges shall continue following grading approval. If it is established on the basis of such monitoring that the hydrologic balance is being preserved without treatment, the treatment facilities may be removed. A one year history of meeting the water quality standards shall be adequate to establish that the hydrologic balance is being preserved.

Where is

~~(b) Ground Water Monitoring — If the PHC determination indicates that adverse impacts may occur to a significant ground water resource, a ground water monitoring plan in accordance with Section 15(b)(2) of the Act should be included in the permit application. The plan shall include a statement of the quantity and quality parameters to be monitored, sampling frequency and duration, site location and a narrative that describes how the data may be used to determine the impact, if any, of the operation upon the hydrologic balance. At a minimum, total dissolves solids, specific conductance, pH, acidity, alkalinity, total iron, total manganese and water levels shall be monitored at each approved monitoring location and the results submitted to the director at least every three (3) months.~~

(b) Ground Water Monitoring - ground water monitoring plans are to be included in the permit application if adverse impacts to a significant groundwater resource are anticipated. This decision will be based on the PHC determination and baseline hydrologic and geologic information gathered for both on and off the minesite. These plans shall identify monitoring site locations (latitude, longitude and ground level elevation), quantity and quality parameters to be monitored, sampling frequency and duration, and describe how the data may be used to determine the impact, if any, of the operation on the hydrologic balance both on and off the minesite. Monitoring quality parameters should include, but not exclusive to, total dissolved solids or specific conductance corrected at 25°C, pH, acidity, alkalinity, total iron, total manganese, water levels, or discharge rates. The selection of these parameters must be based on current and approved postmining land uses and all hydrologic balance protection objectives. Results shall be submitted to the commissioner at least every three (3) months.

(c) Ground Water Monitoring Waivers - if an applicant can demonstrate by the use of the PHC determination and other available baseline hydrologic and geologic information that a particular water-bearing stratum in the proposed permit and adjacent area is not one which serves or may potentially serve as a significant aquifer or ensure the hydrologic balance within the permit and adjacent area, then monitoring of the stratum may be waived by the commissioner. Waivers will be considered and granted separately and exclusively for each individual water-bearing stratum unless it is shown by the use of the PHC determination and baseline hydrologic and geologic information that all individual water-bearing stratums of concern are hydraulically interconnected and can be waived as a complete unit.

working to make deletion of last statement! DELETE

MUST BE A PROVEN SIGNIFICANT ~~AQUIFER~~ "POTENTIALLY" IS TOO DIFFICULT TO DEFINE

7A.02 Hydrologic Information and Analysis - The application shall contain a statement describing the probable hydrologic consequences of the mining operations, both ~~on and off the mine site~~ the permit and adjacent areas with respect to the hydrologic balance. Modeling techniques may be included as part of the application. The latitude, longitude and elevation should be shown for each surface or groundwater sampling point for baseline information. Water sampling and analysis shall be in accordance with OSM approved methods. All applications for permit revisions must be reviewed by the commissioner to determine whether a new or updated PHC determination or cumulative hydrologic impact assessment (CHIA) should be prepared.

(a) Baseline Ground Water Information

1. The location, ownership and use (if any) of known existing wells, springs and other groundwater resources including discharges from other active or abandoned mines within the proposed permit and adjacent areas in sufficient numbers to allow the applicant to make a reasonable approximation of the baseline groundwater conditions and use;

3. For significant aquifers, groundwater quantity descriptions including discharge rates or useage and depth of water under seasonal conditions in each water-bearing stratum above the coal seam and ~~each potentially impacted water-bearing stratum~~ below the coal seam. Where deemed feasible and appropriate by the commissioner, an operator may calculate water useage for water status discharge determination; and

TOO BROAD & UNDEFINABLE

(b) Baseline Surface Water Information

1. The name, location, ownership and description of ~~streams into which water will be discharged~~ all surface water bodies in the permit and adjacent areas;

2. Water quality descriptions including information on total suspended solids, total dissolved solids, specific conductance, pH, acidity, alkalinity, sulfates, total iron and total manganese sufficient to demonstrate seasonal variation; Provided, that correlation data from other monitoring which does not include one or more of the above parameters may be accepted; Provided further, that limited validation samples may be required;

3. Water quantity descriptions including information on seasonal flow rates, variation and water useage; and

4. If the determination of the probable hydrologic consequences (PHC) indicates that a currently used or significant surface water resource (including all lightly buffered streams) is likely to be ~~adversely impacted~~ contaminated, diminished or interrupted, additional information shall be provided on the flood flows, base flows, and other characteristics or information as necessary to fully evaluate such probable hydrologic consequences or to plan remedial and reclamation activities such as water availability, alternative water sources and evaluation of suitability for both the premining and the approved post mining land uses.

(d) The applicant ~~may~~ shall submit all available data and analysis ~~relevant to~~ described in 6A.02(b)(4)(c) with the application for the cumulative hydrologic impact assessment.

(e) In some cases, the PHC may serve as the CHIA if there is no previously existing mining within that particular hydrologic regime's impact area. Otherwise, the regulatory authority shall perform a separate cumulative hydrologic impact assessment and evaluation of the PHC for the permit area and PHC's found within the cumulative impact area. This evaluation shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

7A.03 Geology - The application shall contain ~~a description of the geology in accordance with 10(a)(13) and (14); and 11(a)(12) of the Act for the permit area:~~ the following geologic and related information:

~~(a) Chemical analyses shall, unless otherwise provided by the director or by law or regulation, be determined by using standard procedures found in EPA Manual 600/2-78-054 (Field and Laboratory Methods Applicable to Overburden Minesoils):~~

(a) Geologic cross sections, maps or plans of the proposed affected area, including the actual area to be mined, prepared by or under the direction of and certified by a person approved by the commissioner, showing pertinent elevation and location (latitude and longitude) of test borings or core samplings, where required by the commissioner, and depicting the following information: (A) the nature and depth of the various strata or overburden including geologic formation names and/or geologic members; (B) the elevation location of subsurface water, if encountered, and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) information concerning the areal and structural geology of both the proposed permit and adjacent areas, down to the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer which may be adversely impacted below the lowest coal seam to be mined, will be included in the permit application. Areal geology may include information such as mapped outcrop locations shown on a 7-1/2 minute United States Geological Survey (U.S.G.S.) topographic map, areal photographs, and published geologic reports for the area of concern. Structural geology may include mapped lineament traces from areal photography or topographic maps and any published structural geologic reports for the area of concern; (I) areal and vertical distribution of aquifers with seasonal differences in head and the name(s) of the stratum (or strata) which the water is found; (J) location and depth of all oil and gas wells within the proposed permit area for both surface and underground mines.

MINED

significant

significant

3F.04 Federal Fees -The applicant shall submit proof that all federal reclamation fees are paid.

(a) Fees for the application review and processing of Article 3 permits shall be as follows:

1. Permit Renewals - $500.00 (ACTIVE ONLY)
2. Transfer/Reassignment/Sale - $100.00 (DR 19A ONLY) — No Judgement on DR-19's
3. Notice of Intent to Prospect - $500.00 (Greater than 250 ton)
4. Incidental Boundary Revision (I.B.R.) - $500.00

(b) When more than one of the above items is processed on a single permit, (example: permit renewal with a I.B.R.) only the large fee will be imposed.

(c) Federal Fee - the application shall contain verification that all federal reclamation fees have been paid.

(d) All fees collected shall be deposited to operating permit fees account with the Treasurer of the State of West Virginia.

10D.08 Filing Fees - A filing fee of ~~$50.00~~ $500.00 shall be required with all WV/NPDES Applications filed separately or $250.00 filing fee for those submitted with Article 3 surface mine applications and shall be deposited with the State Treasurer to the credit of the operating permit fees fund in accordance with ~~20-6-9(f)~~ 22A-3-8(f) of the State Act.

(a) Transfer/Modification - $100.00 Deposited with the State Treasurer to the credit of the operating permit fees fund.

(b) Reissuance - $250.00 Deposited with the State Treasurer to the credit of the operating permit fees fund.

3M Renewals

(e) A progress map of the same size and scale as the proposal maps for all operations except those in phase I, II or III release or those with no disturbance and not started into operation.

(h) A copy of a ~~public notice of permit renewal and proof of publication in accordance with section 20 of the Act and section 3B.02 of these regulations.~~ the proposed newspaper advertisement in accordance with section 20 of the Act and section 3B.02 of these regulations.

3M.04 Time Extension - Extension of sixty days (60) may be granted by the commissioner for permit renewal which has been submitted but is logistically impartical to process before the expiration date.

6B.10 Backfilling and Grading: Previously mined areas.

Remining operations on previously mined areas that contain a pre-existing highwall shall comply with 6B.09 or 8B.09 of these regulations, except as provided in this section.

(a) The requirement of highwall elimination shall not apply to remining operations where the volume of all reasonably available spoil located in the permit area is insufficient to completely backfill the reaffected or enlarged highwall as demonstrated in writing by the applicant. The highwall shall be reduced to the maximum extent technically practical.

(b) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the ~~remining~~ EXISTA spoil or otherwise increase the hazard to the public health and safety or to the environment.

(c) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests indicating a more suitable soil medium.

(d) All revegetation shall be carried out in a manner that encourages a prompt vegetative cover which, at a minimum, shall be adequate to control erosion and is consistant with the reclamation plan. The requirements of 4F.08 of the regulations may be modified on a case-by-case basis, by the Commissioner, using information set forth in the approved reclamation plan.

(e) A modified permit may be issued which modifies the requirements under Section 402(a)(1) of the Clean Water Act of 1987 with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level or iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology (BAT) economically achievable on a case-by-case basis, using bet professional judgment (BPJ), to set specific numerical effluent limitations in each permit.

(f) The State may issue a permit pursuant to paragraph (e), if the applicant has demonstrated to the satisfaction of the State that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. During remining operations, no discharge from, or affected by, the operation shall exceed State water quality standards in the receiving stream established under Section 303 of the Clean Water Act.

ABSTRACT



Section 2.09: Administratively Complete Application - brings definition in line with the definition in federal regulations.

Section 2.22: Coal Remining Operation - defines those operations which will qualify for performance standards which differ from those on virgin or unqualified lands.

Sections 2.23 and 2.34: Cumulative Impact/Cumulative Impact Area - defines the areas involved in conducting a Cumulative Hydrologic Impact Assessment (CHIA), and to cause as part of a surface mine application an expanded Probable Hydrologic Consequence (PHC) document.

Sections 2.61 and 2.63: Hydrologic Balance/Hydrological Isolated Operation - establishes new definitions to eliminate misinterpretations concerning hydrology.

Section 2.65: Incidental Boundary Revision - adds new definition to provide for additional permit area to an existing surface mine or deep mine surface disturbance with proper application and reclamation bonding.

Sections 2.89 and 2.97: Pre-existing Discharge/Remined Area - adds new provisions to encourage remining of existing mine sites, in response to the Rahall amendment to the Clean Water Act of 1987 and subsequent OSM regulations.

Section 3B.04: Readvertisement - provides for an additional advertisement on Surface Mine Applications (SMA) which have changed or have been altered during the original advertisement; in response to WV Supreme Court decision in Zirkle v. Faerber.

Section 3B.05: Renotification - adds requirement that DOE notify persons submitting comments to a surface mining application of changes in the application they initially reviewed; in response to Zirkle v. Faerber.

Sections 3B.03, 36.02, 6A.02, 6A.03, 6B.04, 6B.06, 7A.02, 7A.03, 7B.04, 7B.07, 8A.02, 8B.04, 8B.06: Permit Application Requirements - establishes additional requirements for geologic and hydrologic information in mining permit applications, in response to OSM regulations.

Section 4H.05: Self-Bonding - amends existing regulation to bring it into conformance with OSM requirements.

Sections 6C. and 7D.: Incidental Boundary Revisions - establishes requirements for IBR to enable operators to respond to emergency and unforseen conditions on mining operations.

~~Sections 3F.04 and 10D.08: Fees/Filing Fee - establishes new fees and increases existing fees for review and processing permit applications; results in increase in Special Revenue to DOE and decrease in General Revenue for permitting functions.~~

Section 3M: Renewals - corrects errors in current regulations regarding renewal of permit applications, in anticipation of a heavy administrative load over the next few years to renew existing permits.

Sections 6B.10 and 8B.11: Backfilling and Regrading - amends existing regulations to bring into compliance with remining requirements in Clean Water Act of 1987 and OSM regulations.

2. DEFINITIONS: UNLESS THE CONTEXT IN WHICH USED CLEARLY REQUIRES A DIFFERENT MEANING, AS USED IN THESE REGULATIONS OR AS REFERRED TO IN ARTICLE 6, CHAPTER 20, CODE OF WEST VIRGINIA, AS AMENDED:

2.01 Abandoned Coal Waste Disposal Area means any coal refuse disposal area which is not part of an active surface mining operation. This definition does not relieve any operator from his reclamation responsibility for the coal refuse disposal area.

2.02 Acidity means the quantitative capacity of an aqueous medium to donate protons in a reaction with hydroxyl ions.

2.03 Acid Mine Drainage means water discharged from an active, inactive, or abandoned mine and from areas affected by surface mining with a pH of less than 6.0 in which total acidity exceeds total alkalinity.

2.04 Acid-Producing Coal Seam means seams commonly associated with sulfides or other minerals which create acid mine drainage. Seams commonly associated with such material may include, but are not limited to Waynesburg, Washington, Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and Stockton Lewiston. However, specific onsite data may, on a case by case basis, demonstrate that these seams are not acid producing in specific areas.

2.05 Acid-Producing Overburden means material which upon appropriate analysis shows the potential for producing acid mine drainage.

2.06 Acid-Test Ratio means the relation of quick assets to current liabilities.

2.07 Act means West Virginia Code, Chapter 20, Article 6.

2.08 Active Surface Mining Operation means an operation where land is being disturbed or mineral is being removed and where a Phase I Bond Reduction has not been approved unless inactive status has been granted.

2.09 Administratively Complete Application means an application for a permit approval or approval for coal exploration where required, which the Commissioner determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

~~2.09~~ 2.10 Asset Ratio means the relation of total assets to total liabilities.

~~2.10~~ 2.11 Auger Mining means a method of mining coal at a cliff or highwall by drilling or cutting holes into an exposed coal seam.

~~2.11~~ 2.12 Buffer Zone means an undisturbed border along or around an intermittent or perennial stream.

~~2.12~~ 2.13 Bearing Capacity means a measure of the ability of a foundation material to carry loads imposed by an embankment or other structure as determined by standard engineering evaluations.

~~2.13~~ 2.14 Best Technology Currently Available means equipment, devices, systems, methods or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values and achieve enhancement of those resources where practicable.

~~2.14~~ 2.15 Capital Assets means those assets such as land, buildings and equipment held for use in the production or sale of other assets or services.

~~2.15~~ 2.16 Cash means (a) all cash items except cash (1) restricted by an agreement, or (2) described as earmarked for a particular purpose; and (b) short-term investment such as stocks, bonds, notes, and certificates of deposit, where the intent and ability to sell them in the near future is established by the operator.

~~2.16~~ 2.17 Cemetery means any area of land where human bodies are interred.

~~2.17~~ 2.18 Channel Protection means any measures taken to prevent or control erosion, scour, or other destructive processes in channels such as diversion ditches and spillways.

~~2.18~~ 2.19 Coal Processing Plant means a collection of facilities where run-of-the-mine coal is subjected to cleaning, concentrating or other processing or preparation in order to separate coal from its impurities. The processing plant may consist of, but is not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transportation facilities.

2.20 Coal Processing Waste means materials which are separated and wasted from the product coal during the physical or chemical processing, cleaning or concentrating.

~~2.19~~ 2.21 Coal Refuse Disposal Area means a deposit of coal processing waste or underground development waste.

2.22 Coal Remining Operation means a coal mining operation ~~which begins~~ at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

~~2.21.~~ 2.23 Coarse Coal Refuse means coal processing waste predominately within a size range greater than the #28 sieve size.

~~2.22~~ 2.24 Collateral Bond means an indemnity agreement in sum certain deposited with the director executed by the permittee ad supported by one or more of the following:

(1) The deposit of cash in one or more federally insured accounts, payable only to the director upon demand;

(2) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and in the possession of, the director;

(3) Negotiable certificates of deposit, payable only to the director, and in his possession;

(4) An irrevocable letter of credit of any bank organized or authorized to transact business in the State of West Virginia, payable only upon presentation by the director;

(5) A perfected, first-lien security interest in real or personal property, in favor of the director; or

(6) Investment-grade rated securities, having the highest rating issued by a nationally recognized securities rating service, endorsed to the order of, and in the possession of, the director, excluding all issues of the type traded on a commodity exchange such as contracts for future delivery of goods.

~~2.23~~ 2.25 Combined-Coal Refuse means a mixture of coarse coal refuse and dewatered fine coal refuse.

~~2.24~~ 2.26 Combustible Materials means organic materials that are capable of burning by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

~~2.25~~ 2.27 Common-size Comparative Balance Sheet means item amounts from a number of the permittee's or applicant's successive yearly balance sheets arranged side by side in a single statement followed by commonsize percentages whereby: (1) the asset total is assigned a value of 100 percent; (2) the total of liabilities and owner equity is also assigned a value of 100 percent; and (3) each individual asset, liability, and owner equity item is shown as a fraction of one of the 100 percent totals.

~~2.26~~ 2.28 Common-size Comparative Income Statement means an operator's income statement amounts for a number of successive yearly periods arranged side by side in a single statement followed by commonsize percentages whereby net sales are assigned a 100 percent value, and then each statement item is shown as a percentage of net sales.

~~2.27~~ 2.29 Community or Institutional Building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

~~2.28~~ 2.30 Compaction means the densification of a soil or soil-like material by means of mechanical manipulation.

~~2.29 Complete Application means an application which contains all required maps, plans, designs and other application materials excluding bond.~~

~~2.30~~ 2.31 Completion of Reclamation means that the total bond has been released after approval of the final inspection report provided for in these regulations.

~~2.31~~ 2.32 Construction Pore Pressures means water pressures generated in foundation soils or embankments due to compression by loads imposed by construction of an embankment or other structure.

2.33 Cumulative Impact means the hydrologic impact that results from the cumulation of flows from all coal mining sites to common channels or oaquifers in a cumulative impact rea. Individual mines within a given cumulative impact area may be in full compliance with effluent standards and all other regulatory requirements, but as a result of the comingling of their off-site flows, there is a cumulative impact. The Act does not pronibit cumulative impacts but does empnasize that they be minimized. When the magnitude of cumulative impact exceeds threshold limits or ranges as predetermined by the Department, they constitute material damage.

2.34 Cumulative Impact Area means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through Phase II bond release of: (a) the proposed operation; (b) all xisting operations; (c) any operation for which a permit application has been submitted to the Commissioner, and; (d) all operations required to met diligent development requirements for leased Federal coal for which there is actual mine development information available.

~~2.32~~ 2.35 Current Assets means cash and assets that are reasonably expected to be realized in cash or sold or consumed within one year.

~~2.33~~ 2.36 Current Liabilities means debts or other obligations that must be paid or liquidated within a short period of time, usually a yera. This shall also include dividends payable on preferred stock within one year.

~~2.34~~ 2.37 Current Ratio means the relation of current assets to current liabilities.

~~2.35~~ 2.38 Density means the weight of soil or sol-like solids per unit of total volume of soil or similar mass.

~~2.36~~ 2.39 Design Storm means predicted precipitation of given intensity, frequency and duration based on United States Weather Bureau data.

~~2.37~~ 2.40 Director and/or His Authorized Agent means the director of the department of natural resources, deputy directors, the chief of the division of reclamation, the assistant chiefs of the division of reclamation, all duly authorized surface mining reclamation supervisors, inspectors and inspectors-in-training.

~~2.38~~ 2.41 Downslope means the land surface between the projected outcrop of the lowest coal seam being mined or any mining related construction and the valley floor.

~~2.39~~ 2.42 Embankment means a man-made deposit of earth or waste materials, usually exhibiting at least one sloping face.

~~2.40~~ 2.43 Embankment Stability means the degree of safety relative to a structural failure of the embankment.

~~2.41~~ 2.44 Emergency Spillway means a hydraulic structure designed to discharge water in excess of that which an impoundment is designed to store or which cannot be passed through a principal spillway.

~~2.42~~ 2.45 Excess Spoil means spoil material disposed of in a location other than the mined-out area.

~~2.43~~ 2.46 Existing Coal Refuse Area means a refuse disposal area that is part of an active surface mining operation.

~~2.44~~ 2.47 Existing Structure means a structure or facility used with or to facilitate surface coal mining and reclamation operations for which construction began prior to January 18, 1981.

~~2.45~~ 2.48 Face-Up means the result of an excavation where a vertical or near vertical highwall is created that exposes the overburden and/or the mineral face.

~~2.46~~ 2.49 Fine Coal Refuse means coal processing waste predominately within a size range less than the #28 sieve which may be disposed of in a slurry form or in a dewatered or treated state.

~~2.47~~ 2.50 Foundation means soil, bedrock, or other earth material on or against which an embankment or other structure is placed.

~~2.48~~ 2.51 Fragile Lands means geographic areas containing natural, ecologic, scientific or esthetic resources that could be irreparably damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatenedd species of animals or plants, uncommon geologic formations, national natural landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 22(d) of the Act and Section 13 of these regulations.

~~2.49~~ 2.52 Freeboard means (a) the vertical distance between the lowest point of the crest of the embankment and the reservoir water surface or (b) the vertical distance between the top of a ditch or channel and the water surface during the design flow.

~~2.50~~ 2.53 Gravity Discharge means, with respect to underground mining activities, mine drainage that flows freely down gradient in an open channel. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

~~2.51~~ 2.54 Growing Season menas one (1) year.

~~2.52~~ 2.55 Ground Water means subsurface water in the zone of saturation.

~~2.57~~ 2.56 Handbook means the Technical Handbook of Standards and Specifications for Mining Operations in West Virginia prepared by the director of the West Virginia Department of Natural Resources.

~~2.53~~ 2.57 Haulageway or Access Road means any road constructed, improved, maintained or used by the operator with the exception of state maintained roads.

~~2.54~~ 2.58 Hazard Potential means a clasification rating assigned to a structure based on engineering evaluations and judgement predicting the damage to human life, property ad environment should a failure of the structure occur.

~~2.55~~ 2.59 Highwall means the face of exposed overburden or coal in an open cut of a surface mining operation or for entry to an underground mining operation.

~~2.56~~ 2.60 Historic Lands means important historical, cultural and scientific areas that could be irreparably damaged or destroyed by surface mining operations. Examples of historic lands include sites that have been listed on the national register of historic places, national historic landmarks and sites for which historic designation is pending.

2.61 Hydrologic Balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation and changes in ground and surface wter levels and storage.

~~2.58~~ 2.62 Hydrologic Regime means the entire state of water movement in a given area.

2.63 Hydrological Isolated Operation means a surface mining operation where hydrologic impacts are negligible or are dissipated before reaching points in the system where they are additive to hydrologic impacts of other surface mining operations.

~~2.59~~ 2.64 Impoundment means a closed basin constructed for the retention of water, sediment or waste.

2.65 Incidental Boundary Revision means (a) an extension of the permit area that is necessary for reasons unforeseen at the time the original permit application was prepared and which is necessary for the continuance of that permitted operation; or (b) the deletion of bonded acreage which is double-bonded by a valid permit and for which full liability is assumed in writing by the successive permittee.

~~2.60~~ 2.66 Infiltration means the flow or movement of water through the surface of soil or soil like material into the ground.

~~2.62~~ 2.67 Inspection shall mean a visual review of prospecting, surface or other mining operations to insure complete compliance with any applicable law, rule, regulation or permit conditions under jurisdiction of the director.

~~2.61~~ 2.68 Intermittent Stream means a stream or portion of a stream that flows continuously for at least one month of the calendar year as a result of ground water discharge or surface runoff.

~~2.63~~ 2.69 Irreparable Damage to the Environment means any damage to the environment that cannot be corrected by actions of the operator.

~~2.64~~ 2.70 Leachate means a liquid that has percolated through soil, rock or waste and has extracted dissolved or suspended materials.

~~2.65~~ 2.71 Lightly Buffered Stream means any stream or its tributaries that contains less than 15 PPm methyl orange alkalinit to pH 4.5) and a conductivity of less than 50 micro MHO.

~~2.66~~ 2.72 Liquefaction means a phenomenon wherein a saturated granular soil or soil like material loses strength and flows in a manner resembling a liquid.

~~2.67~~ 2.73 Liquidity Ratio means the relation of cash to current liabilities.

~~2.68~~ 2.74 Mine means the shaft, slopes, drifts, or inclines connected with excavations penetrating coal seams or strata and teh surface structures or equipment connected therewith which contributes directly or indirectly to the mining, preparation or handling of coal.

~~2.69~~ 2.75 Mineral Face means the exposed vertical cross-section of the natural coal seam or mineral deposit.

~~2.70~~ 2.76 Natural Drainway means any natural water course which may carry water to the tributaries and rivers of the watershed.

~~2.71~~ 2.77 Natural Hazard Lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe wind or soil erosion, frequent flooding and areas of unstable geology.

~~2.72~~ 2.78 Net Profit means the bottom line of the income statement after taxes, including taxes based on income, adjustments, all extraordinary income and expense, but before preferred and common stock dividends.

~~2.73~~ 2.79 Net Worth means preferred and common stock, all surplus accounts, and retained earnings.

~~2.74~~ 2.80 Occupied Dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

~~2.75~~ 2.81 Outer Spoil or Outer Slope means a disturbed area extending from the outer point of the bench to the extreme lower limit of the disturbed land.

~~2.76~~ 2.82 Overburden means material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil.

~~2.77~~ 2.83 Peak Runoff means the maximum flow at a specified location resulting from a design storm.

~~2.78~~ 2.84 Perennial Stream means a stream or portion of a stream that flows continuously.

~~2.80~~ 2.85 Piping means a process of internal erosion which occurs when water transports soil or soil like materials through unprotected exits, developing unseen channels or pipes through an embankment or its foundation.

~~2.81.~~ 2.86 Pit means that part of the surface mining operation from which the mineral is being actively removed or where the mineral has been removed and teh area has not been backfilled.

~~2.82.~~ 2.87 Potential Hazard means the existence of any condition or practice or any violation of a permit or other requiremetns of the Act in an operating or an abandoned refuse area which might reasonably be expected to cause physical harm to persons, property, or the environment inside or outside the permit area.

~~2.84.~~ 2.88 Preplan means the total application submitted to the director including the application forms, mining and reclamation plan, drainage plan, blasting plan, planting plan, maps, drawings, data, cross-sections, bonds and other information as may be required to obtain a permit.

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

~~2.79~~ 2.90 Principal Shareholder means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

~~2.85.~~ 2.91 Principal Spillway means the hydraulic structure designed to discharge water stored between normal pool and the emergency spillway invert elevations.

~~2.86.~~ 2.92 Probable Maximum Precipitation means the depth-duration-area rainfall for a particular area that represents the maximizing of the most critical meterological conditions that are considered possible.

~~2.87.~~ 2.93 Public Building means any structure that is owned by a public agency or used primarily for public business or meetings.

~~2.88.~~ 2.94 Quick Assets means cash and current assets that can be quickly turned into cash.

~~2.89.~~ 2.95 Recharge Capacity means the ability of the soils and underlying materials to allow precipitation to infiltrate and reach the zone of saturation.

~~2.90~~ 2.96 Reclamation means the process of converting disturbed land to a stable form for productive use.

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

~~2.91.~~ 2.98 Renewable Resource Lands means geographical areas which contribute significantly to the long range productivity of a water supply, or food or fiber products.

~~2.92~~ 2.99 Retained Earnings means stockholder's equity that has arisen from retained assets from earnings in the business. This shall include only earnings from normal operations and not gains from such transactions as the sale of plant assets or investments.

~~2.93~~ 2.100 Return on Investment means the relation of net profit for the last yearly period to ending net worth.

~~2.94~~ 2.101 Safety Factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

~~2.95~~ 2.102 Sediment means solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water gravity or ice and has come to rest on the earth's surface.

~~2.96~~ 2.103 Sediment Control Structure means a structure designed, constructed and maintained in accordance with Section 4B.05 of these regulations.

~~2.97~~ 2.104 Self-Bond means an indemnity agreement in a sum certain payable to the director, executed by the permittee and by each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of his authority as an officer or ownership of all or a significant part of the permittee, and supported by agreements granting the director a security interest in real or personal property pledged to secure performance by the permittee.

~~2.98~~ 2.105 Significant Aquifer means a zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use (or uses).

~~2.99~~ 2.106 Slope Protection means any measures taken to control erosion on slopes.

~~2.100~~ 2.107 Slope Stability means the degree of safety relative to the development of a landslide in the slope, as defined by one or more standard engineering methods of analysis.

~~2.101~~ 2.108 Spoil means overburden that has been removed during surface coal mining operations.

~~2.102~~ 2.109 Stabilize means to control movement of soil, spoil piles or areas of disturbed earth by modifying physical or chemical properties.

~~2.103~~ 2.110 Standard Engineering means sound engineering practice based upon the technology currently available to the engineering profession.

~~2.104~~ 2.111 Stoniness means a characteristic of earth, overburden or spoil reflecting its relative proportion of sizeable aggregate content as opposed to its sand, silt, clay or rock fragment content.

~~2.105.~~ 2.112 Structure means, but is not limited to, gas lines, water lines, towers, airports and dams. This shall not include operational facilities of the surface mining operation for purposes of Section 4C.05(f).

~~2.106.~~ 2.113 Strength Parameters means those engineering values obtained from standard engineering shear strength tests of soil or soil like material.

~~2.107.~~ 2.114 Sub-Drainage System means a designed and constructed system provided for the conveyance of subsurface water.

~~2.108.~~ 2.115 Subsidence means a sinking, collapsing or cracking of a portion of the earth's surface caused by voids beneath the surface created by mining.

~~2.109.~~ 2.116 Substantial Legal and Financial Commitments in a Surface Coal Mining Operation means that significant investments and legal commitments have been made in activities and facilities such as power plants, railroads, coal handling, preparation, extraction or storage facilities and other capital-intensive activities on the basis of a long-term coal contract.

~~2.110.~~ 2.117 Substantially Disturb means, for purposes of prospecting, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or augering coal or water exploratory holes or wells, construction of roads and other access route, and the placement of structures, excavated earth or other debris on the surface of land.

~~2.111.~~ 2.118 Successor in Interest means any person who succeeds to rights granted under a permit by transfer, assignment or sale of those rights.

~~2.112.~~ 2.119 Surety Bond means an indemnity agreement in a sum certain payable to the director executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State of West Virginia.

~~2.113.~~ 2.120 Surface Water means water on the surface of the earth.

~~2.114.~~ 2.121 Topsoil means the A-horizon soil layer of the three major soil horizons.

~~2.115.~~ 2.122 Toxic-Forming Materials means earth materials or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils, air or water that are detrimental to the environment.

~~2.116.~~ 2.123 Transfer, Assignment or Sale of Rights means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the director.

~~2.117~~ 2.124 Toxic Mine Drainage means water that is discharged from active or abandoned mines or other areas affected by surface mining or prospecting operations which contains a substance which through chemical action or physical effects, is likely to kill, injure or impair biota commonly present in the area that might be exposed to it.

~~2.118~~ 2.125 Underground Development Waste means waste rock mixtures of coal, shale, claystone, siltstone or other related materials that are brought to the surface for disposal.

~~2.119~~ 2.126 Valid Existing Rights exists, except for haulroads, in each case in which a person demonstrates that the limitation provided for in Section 22(d) of the Act would result in the unconstitutional taking of that person's rights. For haulroads, valid existing rights means a road or recorded right-of-way or easement for a road which was in existence prior to August 3, 1977. A person possesses valid existing rights if he can demonstrate that the coal is immediately adjacent to an ongoing mining operation which existed on August 3, 1977 and is needed to make the operation as a whole economically viable. Valid existing rights shall also be found for an area where a person can demonstrate that an SMA number had been issued prior to the time when the structure, road, cemetery or other activity listed in Section 22(d) of the Act came into existence.

~~2.120~~ 2.127 Valley or Head-of-Hollow Fill means a fill structure consisting of any material, other than organic material, placed in a valley where side slopes of the existing hollow measured at the steepest point are greater than 20° or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°.

~~2.121~~ 2.128 Woodlands means commercial woodlands where the post-mining land use would be a commercial product where flat or gently rolling land is essential for operation and mechanical harvesting.

~~2.122~~ 2.129 Working Capital means the excess of the operator's current assets over its current liabilities.

~~2.123~~ 2.130 Zone of Saturation means the zone below the piezometric surface in which all voids are filled with groundwater. Piezometric surface means the surface to which the water from a given aquifer will rise under its full head.

3B. ADVERTISEMENT

3B.01 Surface Mine Application Number - Prior to the publication of the advertisement for a surface mining permit, the applicant shall submit an administratively complete surface mining application and obtain a surface mining application (SMA) file number. Each such SMA number shall be valid for one year.

3B.04 Readvertisement

(a) When a Surface Mine Application (SMA), which has been advertised once a week for four successive weeks, has been determined by the commissioner to have had changes effecting the method of operation, the reclamation plan, and/or the original advertisement, then he shall cause a new advertisement to be published one time with a 10-day public comment period in accordance with 3B.02(a), (b), and (c) of these regulations.

(b) Permits which are being renewed or significantly revised must be advertised in accordance with 3B.02 of the regulations and with Section 22A-3-9(a)(6) of the Code of West Virginia.

3B.05 Renotification - A renotification letter shall be sent to all commentors of a surface mine application (SMA) when a determination has been made by the commissioner that readvertisement is required under regulation 3B.04.

3G.02 Maps

(o) the areal distribution of aquifers for the proposed permit and adjacent areas.

(p) the location and depth of all oil and gas wells within the proposed permit area must be shown for both surface and underground mines.

3G.03 Cross Sections - The application shall contain cross-sections which accurately depict:

(a) the existing premining surface configuration and the final surface configuration that will be achieved as proposed in the reclamation plan and/or as required by these regulations.

(b) vertical distribution of aquifers with seasonal differences in head shown if available for the proposed permit area.

6A.02 Hydrologic Information and Analysis - The application shall contain a statement describing the probable hydrologic consequences of the mining operations, both ~~on-and-off-the-mine-site~~ the permit and adjacent areas with respect to the hydrologic balance. Modeling techniques may be included as part of the application. The latitude, longitude and elevation should be shown for each surface or groundwater sampling point for baseline information. Water sampling and analysis shall be in accordance with OSM approved methods. All applications for permit revisions must be reviewed by the commissioner to determine whether a new or updated PHC determination or cumulative hydrologic impact assessment (CHIA) should be prepared.

(a) Baseline Ground Water Information

1. The location, ownership and use (if any) of known existing wells, springs and other groundwater resources including discharges from other active or abandoned mines within the proposed permit and adjacent areas in sufficient numbers to allow the applicant to make a reasonable approximation of the baseline groundwater conditions and use;

3. For significant aquifers, groundwater quantity descriptions including discharge rates or useage and depth of water under seasonal conditions in each water-bearing stratum above the coal seam and each potentially impacted water-bearing stratum below the coal seam. Where deemed feasible and appropriate by the commissioner, an operator may calculate water useage for water status discharge determination; and

(b) Baseline Surface Water Information

1. The name, location, ownership and description of ~~streams into which water will be discharged~~ all surface water bodies in the permit and adjacent areas;

2. Water quality descriptions including information on total suspended solids, total dissolved solids, specific conductance, pH, acidity, alkalinity, sulfates, total iron and total manganese sufficient to demonstrate seasonal variation; Provided, that correlation data from other monitoring which does not include one or more of the above parameters may be accepted; Provided further, that limited validation samples may be required;

3. Water quantity descriptions including information on seasonal flow rates, variation and water useage; and

4. If the determination of the probable hydrologic consequences (PHC) indicates that a currently used or significant surface water resource (including all lightly buffered streams) is likely to be ~~adversely impacted~~ contaminated, diminished or interrupted, additional information shall be provided on the flood flows, base flows, and other characteristics or information as necessary to fully evaluate such probable hydrologic consequences or to plan remedial and reclamation activities such as water availability, alternative water sources and evaluation of suitability for both the premining and the approved post mining land uses.

(d) The applicant ~~may~~ shall submit all available data and analysis ~~relevant to~~ described in 6A.02(b)(4)(c) for the cumulative hydrologic impact assessment with the application.

(e) In some cases, the PHC may serve as the CHIA if there is no previously existing mining within that particular hydrologic regime's impact area. Otherwise, the regulatory authority shall perform a separate cumulative hydrologic impact assessment and evaluation of the PHC for the permit area and PHC's found within the cumulative impact area. This evaluation shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

6A.03 Geology - The application shall contain ~~a description of the geology in accordance with 10(a)(13) and (14), and 11(a)(12) of the Act for the permit area:~~ the following geologic and related information:

~~(a) Chemical analyses shall, unless otherwise provided by the director or by law or regulation, be determined by using standard procedures found in EPA Manual 600/2-78-054 (Field and Laboratory Methods Applicable to Overburden Minesoils). Such analysis shall include pyritic sulphur in the coal seam.~~

(a) Geologic cross sections, maps or plans of the proposed affected area, including the actual area to be mined, prepared by or under the direction of and certified by a person approved by the commissioner, showing pertinent elevation and location (latitude and longitude) of test borings or core samplings, where required by the commissioner, and depicting the following information: (A) the nature and depth of the various strata or overburden including geologic formation names and/or geologic members; (B) the elevation location of subsurface water, if encountered, and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) information concerning the areal and structural geology of both the proposed permit and adjacent areas, down to the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer which may be adversely impacted below the lowest coal seam to be mined, will be included in the permit application. Areal geology may include information such as mapped outcrop locations shown on a 7-1/2 minute United States Geological Survey (U.S.G.S.) topographic map, areal photographs, and published geologic reports for the area of concern. Structural geology may include mapped lineament traces from areal photography or topographic maps and any published structural geologic reports for the area of concern; (I) areal and vertical distribution of aquifers with seasonal differences in head and the name(s) of the stratum (or strata) which the water is found; (J) location and depth of all oil and gas wells within the proposed permit area for both surface and underground mines.

~~(b) In the event that any part of the data required under this subsection is available to the operator from previous investigations of the proposed permit area or adjacent areas with similar characteristics, the data may be used in lieu of development of new data if deemed acceptable by the director in writing.~~

(b) A statement of the result of test borings or core samples from the permit and adjacent areas (if possible) including:

1. The results of test borings which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the commissioner including the structural geology, thickness of the coal seam to be mined, location of subsurface water, if encountered, and an analysis of the chemical and physical properties, including but not exclusive to the sulfur content of any coal seam, the chemical analysis of potentially acid or toxic-forming sections of the overburden, and the chemical analysis of the stratum lying immediately underneath the coal to be mined: Provided, that information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding such mineral or elemental contents which are potentially toxic in the environment, shall be kept confidential and not a matter of public record;

2. Lithologic logs of the drill holes;

3. A detailed discussion and mapped illustration (cross sections and/or aereal) of faults, crop lines, dip/strike, synclines, anticlines and other known geologic structural features which have a bearing on the extraction of the coal and/or the hydrologic regime and should explain the potential impact, if any, is anticipated. Also, within this discussion, a brief description of the degree of fracturing and weathering, if any, noted during the exploration drilling should be included if it is believed to have a potential influence on the extraction of the coal and/or the hydrologic regime.

68.04 Water Quality - Surface and ground water quality and quantity and the hydrologic balance shall be protected from material damage by handling and managing earthen materials, groundwater discharges and runoff in such a manner that minimizes the formation of acid or toxic drainage or infiltration and restores the approximate premining water availability.

6B.06 Monitoring Requirements

(a) Surface Water Monitoring

~~1. All water discharged from the permit area shall be sampled and analyzed and otherwise monitored in accordance with the Clean Water Act of 1977 and all applicable standards of the NPDES program and a monthly report of all measurements shall be submitted to the director; Provided, that all violations of effluent standards shall be reported to the director within five (5) days of receipt of analytical analysis.~~

1. Surface water monitoring plans are to be included in the permit application and will be based on the PHC determination and baseline hydrologic and geologic information. These plans shall identify monitoring site locations, quantity and quality parameters, sampling frequency, and describe how the data may be used to determine the impact, if any, of the operation on the hydrologic balance both the permit and adjacent areas. Monitoring quality parameters should include but not exclusive to total dissolved solids or specific conductance corrected at 25°C, total suspended solids, flow measurements, pH, acidity, alkalinity, total iron and total manganese. The selection of these parameters must be based on current and approved post mining land uses and all hydrologic balance protection objectives.

~~1.~~ 2. All water discharged from the permit area shall be sampled and analyzed and otherwise monitored in accordance with the Clean Water Act of 1977 and all applicable standards of the NPDES program and a monthly report of all measurements shall be reported to the commissioner; Provided, that all violations of effluent standards shall be reported to the commissioner within five (5) days of receipt of analytical analysis.

~~2.~~ 3. Where any discharge from the permit area requires treatment during the mining operation in order to meet the water quality standards set forth in the NPDES regulations, surface water monitoring of such discharges shall continue following grading approval. If it is established on the basis of such monitoring that the hydrologic balance is being preserved without treatment, the treatment facilities may be removed. A one year history of meeting the water quality standards shall be adequate to establish that the hydrologic balance is being preserved.

~~(b) Ground Water Monitoring — If the PHC determination indicates that adverse impacts may occur to a significant ground water resource, a ground water monitoring plan in accordance with Section 15(b)(2) of the Act should be included in the permit application. The plan shall include a statement of the quantity and quality parameters to be monitored, sampling frequency and duration, site location and a narrative that describes how the data may be used to determine the impact, if any, of the operation upon the hydrologic balance. At a minimum, total dissolves solids, specific conductance, pH, acidity, alkalinity, total iron, total manganese and water levels shall be monitored at each approved monitoring location and the results submitted to the director at least every three (3) months.~~

(b) Ground Water Monitoring - ground water monitoring plans are to be included in the permit application if adverse impacts to a significant groundwater resource are anticipated. This decision will be based on the PHC determination and baseline hydrologic and geologic information gathered for both on and off the minesite. These plans shall identify monitoring site locations (latitude, longitude and ground level elevation), quantity and quality parameters to be monitored, samoling frequency and duration, and describe how the data may be used to determine the impact, if any, of the operation on the hydrologic balance both on and off the minesite. Monitoring quality parameters should include, but not exclusive to, total dissolved solids or specific conductance corrected at 25°C, pH, acinity, alkalinity, total iron, total manganese, water levels, or discharge rates. The selection of these parameters must be based on current and approved postmining land uses and all hydrologic balance protection objectives. Results shall be submitted to the commissioner at least every three (3) months.

(c) Ground Water Monitoring Waivers - if an applicant can demonstrate by the use of the PHC determination and other available baseline hydrologic and geologic infomration that a particular water-bearing stratum in the proposed permit and adjacent area is not one which serves or may potentially serve as a significant aquifer or ensure the hydrologic balance within the permit and adjacent area, then monitoring of the stratum may be waived by the commissioner. Waivers will be considered and granted separately and exclusively for each individual water-bearing stratum unless it is shown by the use of the PHC determination and baseline hydrologic and geologic information that all individual water-bearing stratums of concern are hydraulically interconnected and can be waived as a complete unit.

7A.02 Hydrologic Information and Analysis - The application shall contain a statement describing the probable hydrologic consequences of the mining operations, both ~~on and off the mine site~~ the permit and adjacent areas with respect to the hydrologic balance. Modeling techniques may be included as part of the application. The latitude, longitude and elevation should be shown for each surface or groundwater sampling point for baseline information. Water sampling and analysis shall be in accordance with OSM approved methods. All applications for permit revisions must be reviewed by the commissioner to determine whether a new or updated PHC determination or cumulative hydrologic impact assessment (CHIA) should be prepared.

(a) Baseline Ground Water Information

1. The location, ownership and use (if any) of known existing wells, springs and other groundwater resources including discharges from other active or abandoned mines within the proposed permit and adjacent areas in sufficient numbers to allow the applicant to make a reasonable approximation of the baseline groundwater conditions and use;

3. For significant aquifers, groundwater quantity descriptions including discharge rates or useage and depth of water under seasonal conditions in each water-bearing stratum above the coal seam and each potentially impacted water-bearing stratum below the coal seam. Where deemed feasible and appropriate by the commissioner, an operator may calculate water useage for water status discharge determination; and

(b) Baseline Surface Water Information

1. The name, location, ownership and description of ~~streams into which water will be discharged~~ all surface water bodies in the permit and adjacent areas;

2. Water quality descriptions including information on total suspended solids, total dissolved solids, specific conductance, pH, acidity, alkalinity, sulfates, total iron and total manganese sufficient to demonstrate seasonal variation; Provided, that correlation data from other monitoring which does not include one or more of the above parameters may be accepted; Provided further, that limited validation samples may be required;

3. Water quantity descriptions including information on seasonal flow rates, variation and water useage; and

4. If the determination of the probable hydrologic consequences (PHC) indicates that a currently used or significant surface water resource (including all lightly buffered streams) is likely to be ~~adversely impacted~~ contaminated, diminished or interrupted, additional information shall be provided on the flood flows, base flows, and other characteristics or information as necessary to fully evaluate such probable hydrologic consequences or to plan remedial and reclamation activities such as water availability, alternative water sources and evaluation of suitability for both the premining and the approved post mining land uses.

(d) The applicant ~~may~~ shall submit all available data and analysis ~~relevant to~~ described in 6A.02(b)(4)(c) with the application for the cumulative hydrologic impact assessment.

(e) In some cases, the PHC may serve as the CHIA if there is no previously existing mining within that particular hydrologic regime's impact area. Otherwise, the regulatory authority shall perform a separate cumulative hydrologic impact assessment and evaluation of the PHC for the permit area and PHC's found within the cumulative impact area. This evaluation shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

7A.03 Geology - The application shall contain ~~a description of the geology in accordance with 10(a)(13) and (14), and 11(a)(12) of the Act for the permit area~~ the following geologic and related information:

~~(a) Chemical analyses shall, unless otherwise provided by the director or by law or regulation, be determined by using standard procedures found in EPA Manual 600/2-78-054 (Field and Laboratory Methods Applicable to Overburden Minesoils).~~

(a) Geologic cross sections, maps or plans of the proposed affected area, including the actual area to be mined, prepared by or under the direction of and certified by a person approved by the commissioner, showing pertinent elevation and location (latitude and longitude) of test borings or core samplings, where required by the commissioner, and depicting the following information: (A) the nature and depth of the various strata or overburden including geologic formation names and/or geologic members; (B) the elevation location of subsurface water, if encountered, and its quality; (C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) information concerning the areal and structural geology of both the proposed permit and adjacent areas, down to the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer which may be adversely impacted below the lowest coal seam to be mined, will be included in the permit application. Areal geology may include information such as mapped outcrop locations shown on a 7-1/2 minute United States Geological Survey (U.S.G.S.) topographic map, areal photographs, and published geologic reports for the area of concern. Structural geology may include mapped lineament traces from areal photography or topographic maps and any published structural geologic reports for the area of concern; (I) areal and vertical distribution of aquifers with seasonal differences in head and the name(s) of the stratum (or strata) which the water is found; (J) location and depth of all oil and gas wells within the proposed permit area for both surface and underground mines.

~~(b) In the event that any part of the data required under this subsection is available to the operator from previous investigations on the proposed permit area or adjacent areas with similar characteristics, the data may be used in lieu of development of new data if deemed acceptable by the director in writing.~~

(b) A statement of the result of test borings or core samples from the permit and adjacent areas (if possible) including:

1. The results of test borings which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the commissioner including the structural geology, thickness of the coal seam to be mined, location of subsurface water, if encountered, and an analysis of the chemical and physical properties, including but not exclusive to the sulfur content of any coal seam, the chemical analysis of potentially acid or toxic-forming sections of the overburden, and the chemical analysis of the stratum lying immediately underneath the coal to be mined: Provided, that information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding such mineral or elemental contents which are potentially toxic in the environment, shall be kept confidential and not a matter of public record;

2. Lithologic logs of the drill holes;

3. A detailed discussion and mapped illustration (cross sections and/or aereal) of faults, crop lines, dip/strike, synclines, anticlines and other known geologic structural features which have a bearing on the extraction of the coal and/or the hydrologic regime and should explain the potential impact, if any, is anticipated. Also, within this discussion, a brief description of the degree of fracturing and weathering, if any, noted during the exploration drilling should be included if it is believed to have a potential influence on the extraction of tne coal and/or the hydrologic regime.

7B.04 Water Quality - Surface and ground water quality and quantity and the hydrologic balance shall be protected from material damage by handling and managing earthen materials, groundwater discharges and runoff in such a manner that minimizes the formation of acid or toxic drainage or infiltration and restores the approximate premining water availability.

7B.07 Monitoring Requirements

(a) Surface Water Monitoring

~~1. All water discharged from the permit area shall be sampled, analyzed and otherwise monitored in accordance with the Clean Water Act of 1977 and all applicable standards of the NPDES program, and a monthly report of all measurements shall be submitted to the director; Provided, that all violations of effluent standards shall be reported to the director within five (5) days of receipt of analytical analyses; and~~

1. Surface water monitoring plans are to be included in the permit application and will be based on the PHC determination and baseline hydrologic and geologic information. These plans shall identify monitoring site locations, quantity and quality parameters, sampling frequency, and describe how the data may be used to determine the impact, if any, of the operation on the hydrologic balance both the permit and adjacent areas. Monitoring quality parameters should include but not exclusive to total dissolved solids or specific conductance corrected at 25°C, total suspended solids, flow measurements, pH, acidity, alkalinity, total iron and total manganese. The selection of these parameters must be based on current and approved post mining land uses and all hydrologic balance protection objectives.

~~1.~~ 2. All water discharged from the permit area shall be sampled and analyzed and otherwise monitored in accordance with the Clean Water Act of 1977 and all applicable standards of the NPDES program and a monthly report of all measurements shall be reported to the commissioner; Provided, that all violations of effluent standards shall be reported to the commissioner within five (5) days of receipt of analytical analysis.

~~2.~~ 3. Where any discharge from the permit area requires treatment during the mining operation in order to meet the water quality standards set forth in the NPDES regulations, surface water monitoring of such discharges shall continue following grading approval. If it is established on the basis of such monitoring that the hydrologic balance is being preserved without treatment, the treatment facilities may be removed. A one year history of meeting the water quality standards shall be adequate to establish that the hydrologic balance is being preserved.

~~(b) - Ground Water Monitoring — If the PHC determination indicates that adverse impacts may occur to a significant ground water resource, a ground water monitoring plan in accordance with Section 15(b)(2) of the Act should be included in the permit application. The plan shall include a statement of the quantity and quality parameters to be monitored, sampling frequency and duration, site location, and a narrative that describes how the data may be used to determine the impact, if any, of the operation upon the hydrologic balance. At a minimum, total dissolves solids, specific conductance, pH, acidity, alkalinity, total iron, total manganese, and water levels shall be monitored at each approved monitoring location, and the results submitted to the director, at least every three (3) months.~~

(b) Ground Water Monitoring - ground water monitoring plans are to be included in the permit application if adverse impacts to a significant groundwater resource are anticipated. This decision will be based on the PHC determination and baseline hydrologic and geologic information gathered for both on and off the minesite. These plans shall identify monitoring site locations (latitude, longitude and ground level elevation), quantity and quality parameters to be monitored, sampling frequency and duration, and describe how the data may be used to determine the impact, if any, of the operation on the hydrologic balance both on and off the minesite. Monitoring quality parameters should include, but not exclusive to, total dissolved solids or specific conductance corrected at 25°C, pH, acidity, alkalinity, total iron, total manganese, water levels, or discharge rates. The selection of these parameters must be based on current and approved postmining land uses and all hydrologic balance protection objectives. Results shall be submitted to the commissioner at least every three (3) months.

(c) Ground Water Monitoring Waivers - if an applicant can demonstrate by the use of the PHC determination and other available baseline hydrologic and geologic infomration that a particular water-bearing stratum in the proposed permit and adjacent area is not one which serves or may potentially serve as a significant aquifer or ensure the hydrologic balance within the permit and adjacent area, then monitoring of the stratum may be waived by the commissioner. Waivers will be considered and granted separately and exclusively for each individual water-bearing stratum unless it is shown by the use of the PHC determination and baseline hydrologic and geologic information that all individual water-bearing stratums of concern are hydraulically interconnected and can be waived as a complete unit.

8A.02 Hydrologic Information and Analysis - The application shall contain a statement describing the probable hydrologic consequences of the mining operations, both ~~on and off the mine site~~ the permit and adjacent areas with respect to the hydrologic balance. Modeling techniques may be included as part of the application. The latitude, longitude and elevation should be shown for each surface or groundwater sampling point for baseline information. Water sampling and analysis shall be in accordance with OSM approved methods. All applications for permit revisions must be reviewed by the commissioner to determine whether a new or updated PHC determination or cumulative hydrologic impact assessment (CHIA) should be prepared.

(a) Baseline Ground Water Information

1. The location, ownership and use (if any) of known existing wells, springs and other groundwater resources including discharges from other active or abandoned mines within the proposed permit and adjacent areas in sufficient numbers to allow the applicant to make a reasonable approximation of the baseline groundwater conditions and use;

3. For significant aquifers, groundwater quantity descriptions including discharge rates or useage and depth of water under seasonal conditions in each water-bearing stratum above the coal seam and each potentially impacted water-bearing stratum below the coal seam. Where deemed feasible and appropriate by the commissioner, an operator may calculate water useage for water status discharge determination; and

(b) Baseline Surface Water Information

1. The name, location, ownership and description of ~~streams into which water will be discharged~~ all surface water bodies in the permit and adjacent areas;

2. Water quality descriptions including information on total suspended solids, total dissolved solids, specific conductance, pH, acidity, alkalinity, sulfates, total iron and total manganese sufficient to demonstrate seasonal variation; Provided, that correlation data from other monitoring which does not include one or more of the above parameters may be accepted; Provided further, that limited validation samples may be required;

3. Water quantity descriptions including information on seasonal flow rates, variation and water useage; and

4. If the determination of the probable hydrologic consequences (PHC) indicates that a currently used or significant surface water resource (including all lightly buffered streams) is likely to be ~~adversely impacted~~ contaminated, diminished or interrupted, additional information shall be provided on the flood flows, base flows, and other characteristics or information as necessary to fully evaluate such probable hydrologic consequences or to plan remedial and reclamation activities such as water availability, alternative water sources and evaluation of suitability for both the premining and the approved post mining land uses.

(d) The applicant may shall submit all available data and analysis relevant to described in 6A.02(b)(4)(c) for the cumulative hydrologic impact assessment with the application.

(e) In some cases, the PHC may serve as the CHIA if there is no previously existing mining within that particular hydrologic regime's imapct area. Otherwise, the regulatory authority shall perform a separate cumulative hydrologic impact assessment and evaluation of the PHC for the permit area and PHC's found within the cumulative impact area. This evaluation shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

88.04 Water Quality - Surface and ground water quality and quantity and the hydrologic balance shall be protected from material damage by handling and managing earthen materials, groundwater discharges and runoff in such a manner that minimizes the formation of acid or toxic drainage or infiltration and restores the approximate premining water availability.

88.06 Monitoring Requirements

(a) Surface Water Monitoring

~~1. All water discharged from the permit area shall be sampled and analyzed and otherwise monitored in accordance with the Clean Water Act of 1977 and all applicable standards of the NPDES program and a monthly report of all measurements shall be submitted to the director; Provided, that all violations of effluent standards shall be reported to the director within five (5) days of receipt fo analytical analysis.~~

1. Surface water monitoring plans are to be included in the permit application and will be based on the PHC determination and baseline hydrologic and geologic information. These plans shall identify monitoring site locations, quantity and quality parameters, samoling frequency, and describe how the data may be used to determine the impact, if any, of the operation on the hydrologic balance both the permit and adjacent areas. Monitoring quality parameters should include but not exclusive to total dissolved solids or specific conductance corrected at 25°C, total suspended solids, flow measurements, pH, acidity, alkalinity, total iron and total manganese. The selection of these parameters must be based on current and approved post mining land uses and all hydrologic balance protection objectives.

~~1.~~ 2. All water discharged from the permit area shall be sampled and analyzed and otherwise monitored in accordance with the Clean Water Act of 1977 and all applicable standards of the NPDES program and a monthly report of all measurements shall be reported to the commissioner; Provided, that all violations of effluent standards shall be reported to the commissioner within five (5) days of receipt of analytical analysis.

~~2.~~ 3. Where any discharge from the permit area requires treatment during the mining operation in order to meet the water quality standards set forth in the NPDES regulations, surface water monitoring of such discharges shall continue following grading approval. If it is established on the basis of such monitoring that the hydrologic balance is being preserved without treatment, the treatment facilities may be removed. A one year history of meeting the water quality standards shall be adequate to establish that the hydrologic balance is being preserved.

~~(b) - Ground Water Monitoring -- If the PHC determination indicates that adverse impacts may occur to a significant ground water resource, a ground water monitoring plan in accordance with section 15(b)(2) of the Act should be included in the permit application. The plan shall include a statement of the quantity and quality parameters to be monitored, sampling frequency and duration, site location and a narrative that describes how the data may be used to determine the impact, if any, of the operation upon the hydrologic balance. At a minimum, total dissolves solids, specific conducance, pH, acidity, alkalinity, total iron, total manganese, and water levels shall be monitored at each approved monitoring location and the results submitted to the director at least every three (3) months.~~

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(c) Ground Water Monitoring Waivers - if an applicant can demonstrate by the use of the PHC determination and other available baseline hydrologic and geologic infomration that a particular water-bearing stratum in the proposed permit and adjacent area is not one which serves or may potentially serve as a significant aquifer or ensure the hydrologic balance within the permit and adjacent area, then monitoring of the stratum may be waived by the commissioner. Waivers will be considered and granted separately and exclusively for each individual water-bearing stratum unless it is shown by the use of the PHC determination and baseline hydrologic and geologic information that all individual water-bearing stratums of concern are hydraulically interconnected and can be waived as a complete unit.

REPLACE 4H.05 OF CURRENT REGULATIONS WITH THE FOLLOWING:

4H.05 Self-Bonding.

(a) Definitions. For the purposes of this section only:

(1) Current assets means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

(2) Current liabilities means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

(3) Fixed assets means plants and equipment, but does not include land or coal in place.

(4) Liabilities means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

(5) Net worth means total assets minus total liabilities and is equivalent to owners equity.

(6) Parent corporation means corporation which owns or controls the applicant.

(7) Tangible net worth means net worth minus intangibles such as goodwill and rights to patents or royalties.

(b) The commissioner may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

(1) The applicant designates a suitable agent to receive service of process in the State where the proposed surface coal mining operation is to be conducted.

(2) The applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediatley preceding the time of application.

(i) The commissioner may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each memoer of the joint venture or syndicate has been in continuous operation for at least 5 years immediately preceding the time of application.

(ii) When calculating the period of continuous operation, the commissioner may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood or remaining in business during the proposed surface coal mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(i) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

(ii) The applicant has a tangible net worth of at least $10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(iii) The applicant's fixed assets in the United States total at least $20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(4) The applicant submits;

(i) Financial statements for the most recently completed fiscal year accompanies by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

(ii) Unaudited financial statements for completed quarters in the current fiscal year; and

(iii) Additional unaudited information as requested by the commissioner.

(c) The commissioner may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if tne guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

(1) If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the commissioner sufficient to complete tne reclamation plan, but not to exceed the bond amount.

(2) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the commissioner at least 90 days in advance of the cancellation date, and the commissioner accepts the cancellation.

(3) The cancellation may be accepted by the commissioner if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

REPLACE 4H.05 OF CURRENT REGULATIONS WITH THE FOLLOWING: 

(d) For the commissioner to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the commissioner to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

(e) If the commissioner accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.

(2) Corporations applying for a self-bond or parent corporations guaranteeing a subsidiary's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind the corporation. A copy of such authorization shall be provided to the commissioner.

(3) If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

(4) Pursuant to the West Virginia Energy Act, 22A-3-17(b), the applicant or parent corporation guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the commissioner an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under State law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(f) The commissioner may require self-bonded applicants and parent guarantors to submit an update of the information required under paragraphs (b)(3)n and (b)(4) of this section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

(g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the parent corporation guarantor change so that the criteria of paragraphs (b)(3) and (d) of this section are not satisfied, the permittee shall notify the commissioner immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond.

NEW REGULATION

6C. Incidental Boundary Revisions (IBR) - All incidental boundary revisions shall be granted in accordance with Section 19(a)(2) of the Act and shall be limited to additional areas of disturbance directly related to surface mining. Incidental boundary revisions shall not be granted for any Notice of Intent to Prospect.

6C.01 General - In addition to the information required by Section 19(a)(2) of the Act the following requirements shall be met:

(a) The application shall be filed on forms provided by the commissioner.

(b) The maximum total acreage to be permitted on one or more IBR's shall be no more than 60% of the acreage on the original permit or a maximum of 150 Acres.

(c) If the IBR is contiguous to the mining area of the original permitted area and is an insignificant IBR, a legal advertisement shall be published one time in accordance with Section 3B.04 of these regulations. The legal advertisement shall state that written protests will be accepted by the commissioner until a certain date which shall be at least ten days after the publication of the applicant's advertisement.

(d) If the IBR is not contiguous to the mining area, or is a significant IBR, a legal ad in accordance with Section 3B.02 of the rules and regulations and Section 3-9(a)(6) of the Act will be required.

(e) All provisions of the IBR which differ from the original permit shall meet the requirements of the Act and regulations, except as provided in this section.

6C.02 An IBR will not be deemed to be significant unless it is determined that the environmental impact or welfare and safety of the public may be altered from that reflected in the approved permit.

6C.03 All IBR's for a permit will be subject to review and approval by the commissioner.

6C.04 No IBR to a permit may be implemented by any operator until written approval of the commissioner has been granted.

7D. Incidental Boundary Revisions (IBR) -All incidental boundary revisions shall be granted in accordance with section 19(a)(2) of the Act and shall be limited to additional areas of disturbance directly related to underground mining. ~~development such as additional drift openings, shafts, boreholes and related structures and the uphill expansion of existing refuse areas. Incidental boundary revisions shall not be granted for areas not uniquely related to underground mines such as coal storage, refuse disposal (except the uphill expansion of existing refuse areas) and coal haulage.~~

7D.01 General - In addition to the information required by Section 19(a)(2) of the Act, the following requirements shall be met:

(a) The application shall be filed on forms provided by the commissioner.

(b) If the IBR is contiguous to the mining area of the original permitted area or is connected by projected mining boundaries and is an insignificant IBR, a legal advertisement shall be published one time in accordance with Section 38.04 of these regulations. The legal advertisement shall state that written protests will be accepted by the commissioner until a certain date which shall be at least ten days after the publication of the applicant's advertisement.

(c) If the IBR is not contiguous to the mining area, or is a significant IBR, a legal ad in accordance with Section 38.02 of the rules and regulations and Section 3-9(a)(6) of the Act will be required.

(d) All provisions of the IBR which differ from the original permit shall meet the requirements of the Act and regulations, except as provided in this section.

70.02 An incidental boundary revision will not be deemed to be significant unless it is determined that the environmental impact or welfare and safety of the public may be altered from that reflected in the approved permit.

70.03 All incidental boundary revisions for a permit will be subject to review and approval by the commissioner.

70.04 No incidental boundary revision to a permit may be implemented by any operator until written approval of the commissioner has been granted.

3M Renewals

(e) A progress map of the same size and scale as the proposal maps for all operations except those in phase I, II or III release or those with no disturbance and not started into operation.

(h) A copy of ~~a public notice of permit renewal and proof of publication in accordance with section 20 of the Act and section 3B.02 of these regulations.~~ the proposed newspaper advertisement in accordance with section 20 of the Act and section 3B.02 of these regulations.

3M.04 Time Extension - Extension of sixty days (60) may be granted by the commissioner for permit renewal which has been submitted but is logistically impartical to process before the expiration date.

6B.10 Backfilling and Grading: Previously mined areas.

Remining operations on previously mined areas that contain a pre-existing highwall shall comply with 6B.09 or 8B.09 of these regulations, except as provided in this section.

(a) The requirement of highwall elimination shall not apply to remining operations where the volume of all reasonably available spoil located in the permit area is insufficient to completely backfill the reaffected or enlarged highwall as demonstrated in writing by the applicant. The highwall shall be reduced to the maximum extent technically practical.

(b) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(c) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests indicating a more suitable soil medium.

(d) All revegetation shall be carried out in a manner that encourages a prompt vegetative cover which, at a minimum, shall be adequate to control erosion and is consistant with the reclamation plan. The requirements of 4F.08 of the regulations may be modified on a case-by-case basis, by the Commissioner, using information set forth in the approved reclamation plan.

(e) A modified permit may be issued which modifies the requirements under Section 402(a)(1) of the Clean Water Act of 1987 with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level or iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology (BAT) economically achievable on a case-by-case basis, using bet professional judgment (BPJ), to set specific numerical effluent limitations in each permit.

(f) The State may issue a permit pursuant to paragraph (e), if the applicant has demonstrated to the satisfaction of the State that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. During remining operations, no discharge from, or affected by, the operation shall exceed State water quality standards in the receiving stream established under Section 303 of the Clean Water Act.

8B.11 Backfilling and Grading: Previously mined areas.

Remining operations on previously mined areas that contain a pre-existing highwall shall comply with 6B.09 or 8B.09 of these regulations, except as provided in this section.

(a) The requirement of highwall elimination shall not apply to remining operations where the volume of all reasonably available spoil located in the permit area is insufficient to completely backfill the reaffected or enlarged highwall as demonstrated in writing by the applicant. The highwall shall be reduced to the maximum extent technically practical.

(b) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbance will cause instability of the remining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(c) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests indicating a more suitable soil medium.

(d) All revegetation shall be carried out in a manner that encourages a prompt vegetative cover which, at a minimum, shall be adequate to control erosion and is consistant with the reclamation plan. The requirements of 4F.08 of the regulations may be modified on a case-by-case basis, by the Commissioner, using information set forth in the approved reclamation plan.

(e) A modified permit may be issued which modifies the requirements under Section 402(a)(1) of the Clean Water Act of 1987 with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level or iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology (BAT) economically achievable on a case-by-case basis, using bet professional judgment (BPJ), to set specific numerical effluent limitations in each permit.

(f) The State may issue a permit pursuant to paragraph (e), if the applicant has demonstrated to the satisfaction of the State that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. During remining operations, no discharge from, or affected by, the operation shall exceed State water quality standards in the receiving stream established under Section 303 of the Clean Water Act.

# PUBLIC NOTICE MAILING LIST

1. Clarksburg Publishing Company
   Clarksburg Exponent and Telegram
   324-326 Hewes Avenue
   Clarksburg, West Virginia 26301

2. Inter-Mountain
   Post Office Box 1339
   Elkins, West Virginia 26241

3. Herald Dispatch
   946 Fifth Avenue
   Huntington, West Virginia 25720

4. Beckley Newspapers, Inc.
   Raleigh Register and Beckley Post-Herald
   Post Office Drawer P or R
   Beckley, West Virginia 25801

5. The Dominion Post
   Greer Building
   Morgantown, West Virginia 26505

6. The Ogden Newspapers, Inc.
   Wheeling News Register and Intelligencer
   1500 Main Street
   Wheeling, West Virginia 26003

7. The Charleston Gazette
   Post Office Box 2993
   Charleston, West Virginia 25330

8. Independent Oil & Gas Association
   22 Capitol Street
   Charleston, West Virginia 25301

9. West Virginia Oil and Natural Gas Association
   Post Office Box 3231
   Charleston, West Virginia 25332

PUBLIC HEARING RECORD

WEST VIRGINIA DEPARTMENT OF ENERGY

Title 38
Series 2
Surface Mine Reclamation Regulations

July 1, 1987

A public hearing on the subject regulations was held on July 1, 1987 at the West Virginia Department of Energy Conference Room, 1615 Washington Street, East, Charleston, West Virginia. The hearing record was opened at 10:00 a.m. by Roger T. Hall, Administrator for the Department of Energy. In attendance were William B. Raney, representing the West Virginia Mining and Reclamation Association; Mark Polen, representing the West Virginia Coal Association; and Ms. Martha Hodell, representing the Charleston Newspaper.

No oral comments were given; however, Mr. Raney submitted written comments on behalf of his Association's membership.

No other persons coming forth to present either written or oral comments, the hearing record was closed at 10:30 a.m.

WEST VIRGINIA MINING AND RECLAMATION ASSOCIATION 1624 KANAWHA BOULEVARD, EAST ● CHARLESTON, WEST VIRGINIA 25311 ● (304) 346-5318

July 1, 1987

Kenneth R. Faerber
Commissioner
West Virginia Department of Energy
1615 Washington Street, East
Charleston, West Virginia 25311

Dear Commissioner Faerber:

Attached are several comments and recommendations to the emergency regulations filed with the Secretary of State's Office on May 20, 1987. These are offered on behalf of the more than 325 member companies of the Association which are involved directly and indirectly in the mining of West Virginia coal. The comments are presented in the format suggested by your office.

I would be pleased to discuss these matters in greater detail should there be any questions regarding their applicability.

Sincerely,

William B. Raney
Vice-President

RESPONSE TO COMMENTS

WEST VIRGINIA DEPARMENT OF ENERGY

Title 30
Series 2

The following is the Department of Energy's response to written comments filed by the West Virginia Mining and Reclamation Association.

3D Insurance

The Association suggests that the requirements for insurance be applied only to active surface mining operations.

Although the rationale for this change is sound, the regulations establish insurance rates and other requirements which are part of a permit application. This provision therefore, addressed action taken prior to issuing a permit and prior to active mining operations. The Association's concerns are addressed in other sections of the regulations.

3M.01 Permit Renewals

The Association again suggests that the application provisions apply only to active surface mining operations. An incorrect code citation is also noted.

The comment is not accepted by the Department, because permit renewals are often required for inactive operations. The Code citation error has been corrected.

2.22 Coal Remining Operations

The Association points out an editorial correction in the definition of this term.

The correction is noted, and the definition amended.

2.33 Cumulative Impact

The Association suggests deleting the last sentence in the definition of this term, as being duplication and unnecessary. They also inquire as to the source of the definition.

The Department feels that the last sentence is important in that it establishes what constitutes material damage as it relates to the definition. The definition was originally developed by the federal Office of Surface Mining.

2.62 Hydrological Isolated Operations

The Association suggests the term to be defined be changed to a more descriptive term, i.e. Negligible Hydrological Operations.

The Department does not agree that the suggested term is more descriptive. The definition contemplates a hydrological area which is "cut off" from other hydrologic systems, therefore, bearing negligible impacts to other areas, but not necessarily being of negligible significance in and of itself.

2.105 Significant Aquifer

The Association suggests the phrase "can store and" be deleted from the definition of this term. They rationalize that any aquifer is capable of storing water.

The Department agrees that one would assume that any aquifer could store water at least for a short period of time, however, the phrase is important in establishing that the aquifer is "significant".

3B.04 Readvertisement

The Association suggests that the qualifying term "significantly" be used to determine changes in a permit application, which would require readvertisement. They further suggest that public comment be limited to only the changes.

The Department feels that any change affecting the listed parts of an application would be significant enough to

require readvertisement. Also, the changes may affect other parts of the application, therefore, public comment cannot be limited.

36.02 Maps
36.03 Cross Sections

The Association suggests that the qualifying terms "significant" and "if any" be applied to the word aquifer.

Both state and federal law requires that all aquifers be identified. Also, to impose a requirement that the applicant establish that an aquifer is significant or non-significant appears to be overly burdensome.

6A.02(a)(3)

The Association suggests deleting the phrase "each potentially impacted water bearing stratum" as being too broad and indefinite.

The Department views the phrase as limiting these aquifers below the coal seam that require attention. Without the phrase, all aquifers would have to be addressed, which is more all-inclusive.

6A.03(a)

The Association suggests that the term affected be replaced with the term mined, as it relates to strike and dip of coal seams identified. Also, they suggest use of the qualifying term "significant" as it applies to aquifers.

The Department sees no difference in the strike and dip of the coal seam in the mined area, or the affected area. The use of the term mined in the context of the regulation would be redundant.

The use of the term significant would limit the aquifers to be addressed, which is contrary to federal and state law. Also, it would require the operator to establish the nature of each aquifer which would seem to be overly burdensome.

6B.06(a)(3)

The Association suggests that the regulations specify the location of the hydrologic balance.

The Department views the term to be a general description of all water-related criteria within the area of the permit or mining operation. No additional specificity seems warranted.

6B.06(c)

The Association suggests that the phrase "or may potentially serve" be deleted as being too difficult to define. They suggest the phrase "proven significant aquifer".

The Departmnent views the phrase "may potentially serve" as being broad and offering greater flexibility. To use the phrase "proven significant", would be too specific and would place an overly burdensome requirement on the operator to prove the significance of an aquifer.

7B.02 (a)(3)

See response to 6B.06(a)(3)

7A.03(a)

See response to 6A.03(a)

3F.04

This section has been deleted at the request of the Secretary of State's Office. See Decision No. 9-87, July 10, 1987 attached.

6B.10(b)

The Assocation suggests the term "pre-mining" be replaced with the term "existing".

The Department views this as being semantical, requiring unnecessary revision.