



Figure 1

Side view of an apparatus or testing block for testing compliance with the proposed 60 degree tilt angle standard.

## BILLING CODE 6355-01-C

Dated: June 27, 1995.

**Sadye E. Dunn,**

Secretary, Consumer Product Safety Commission.

**Reference Documents**

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814:

1. Multiple Tube Mine and Shell Fireworks Devices: Advance Notice of Proposed Rulemaking; Request for Comments and Information, 59 Fed. Reg. 33928 (July 1, 1994).
2. Briefing Package: Multiple Tube Mine and Shell Fireworks Devices, Consumer Product Safety Commission, May 31, 1994.
3. Briefing Memorandum on Multiple Tube Mine and Shell Fireworks Devices, from Ronald L. Medford, HIR to the Commission, June 8, 1995.
4. Memorandum from Michael Babich, Project Manager, HSHE, "Responses to Public Comments on Multiple Tube Mine and Shell Devices," May 22, 1995.
5. Memorandum from Leonard Schacter, EPHA, to Michael Babich, HSHE, "Annual Estimated Injuries Associated with Multiple tube Mine and Shell Fireworks Devices," June 1, 1995.
6. Memorandum from James Carleton and Jay Sonenthal, LSHS, to Michael Babich, HSHE, "Results for Dynamic Stability Testing of Large Multiple Tube Mine and Shell Devices, May 18, 1995.
7. Memorandum from Thomas Caton, ESME, to Michael Babich, HSHE, "Fireworks Testing: Test Surface Roughness," May 22, 1995.
8. Report from Terry Kissinger, EPHA, to Michael Babich, HSHE, "A Comparison of the Tipover Performances of Multiple Tube Mine and Shell Devices on Grass and Foam," January 1995.
9. Memorandum from George F. Sushinsky, LSEL, to Michael Babich, HSHE, "Dimensional and Stability Measurements of Fireworks," March 10, 1995.
10. Memorandum from George F. Sushinsky, LSEL, to Michael Babich, HSHE, "Tip Angle Measurements of a Device with a Plastic Base," April 13, 1995.
11. Memorandum from Jay Sonenthal, LSHL, to Michael Babich, HSHE, "Test of a Device with a Plastic Base," May 22, 1995.
12. Memorandum from Sam Hall, CERM, to Michael Babich, HSHE, "Acceptable Tipover Rate for Multiple Tube Devices," November 21, 1994.
13. Memorandum from Anthony Homan, ECPA, to Michael Babich, HSHE, "Multiple Tube Mine and Shell Fireworks Devices—Regulatory Analysis," May 18, 1995.
14. Memorandum from Sam Hall, CERM, to Michael Babich, HSHE, "AFSL's Interim Voluntary Standard for Large Multiple Tube Mine and Shell Devices and Staff's Proposed Mandatory Static Performance Standard, May 25, 1995.
15. Product and Performance Standard for Mines and Shells—Single or Multiple Shot," Version 1.1, American Fireworks Standards Laboratory, Bethesda, Maryland, January 28, 1993.
16. Memorandum from Neil Gasser, LSHL, to Michael Babich, HSHE, "Additional Tests of Multiple Tube Mine and Shell Devices," June 8, 1995.

[FR Doc. 95-16313 Filed 7-3-95; 8:45 am]

BILLING CODE 6355-01-P

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 948****West Virginia Program Amendment**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening and extension of public comment period.

**SUMMARY:** OSM is announcing the receipt of additional revisions to the West Virginia permanent regulatory

program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional revisions pertain to a previously proposed amendment (WV-074) to West Virginia's Surface Mining Reclamation Regulations. The proposed revisions concern the definition of chemical treatment, ownership and control files, roads, as-built designs, noncoal mine waste, durable rock fills, small operator assistance and other matters. The amendment is intended to improve operational efficiency and revise the West Virginia program to be consistent with the corresponding Federal regulations and SMCRA.

**DATES:** Written comments must be received on or before 4 p.m. on July 20, 1995.

**ADDRESSES:** Written comments should be mailed or hand delivered to James C. Blankenship, Jr., Director, Charleston Field Office at the address listed below

Copies of the proposed amendment, the West Virginia program, and the administrative record are available for public review and copying at the addresses below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Charleston Field Office.

James C. Blankenship, Jr., Director,  
Charleston Field Office, Office of  
Surface Mining Reclamation and  
Enforcement, 1027 Virginia Street,  
East, Charleston, West Virginia 25301,  
Telephone: (304) 347-7158

West Virginia Division of  
Environmental Protection, 10  
McJunkin Road, Nitro, West Virginia  
25143, Telephone (304) 759-0515

In addition, copies of the proposed amendments are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation  
and Enforcement, Morgantown Area  
Office, 75 High Street, Room 229, PO  
Box 886, Morgantown, West Virginia  
26507, Telephone: (304) 291-4004

Office of Surface Mining Reclamation  
and Enforcement, Beckley Area  
Office, 323 Harper Park Drive, Suite 3,  
Beckley, West Virginia 25801,  
Telephone: (304) 255-5265

Office of Surface Mining Reclamation  
and Enforcement, Logan Area Office,  
313 Hudgins Street, 2nd Floor, PO  
Box 506, Logan, West Virginia 25601,  
Telephone: (304) 752-2851

**FOR FURTHER INFORMATION CONTACT:**  
Mr. James C. Blankenship, Jr., Director,  
Charleston Field Office; Telephone:  
(304) 347-7158.

## SUPPLEMENTARY INFORMATION:

### I. Background

SMCRA was passed in 1977 to address environmental and safety problems associated with coal mining. Under SMCRA, OSM works with States to ensure that coal mines are operated in a manner that protects citizens and the environment during mining, that the land is restored to beneficial use following mining, and that the effects of past mining at abandoned coal mines are mitigated.

Many coal-producing States, including West Virginia, have sought and obtained approval from the Secretary of the Interior to carry out SMCRA's requirements within their borders. In becoming the primary enforcers of SMCRA, these "primacy" states accept a shared responsibility with OSM to achieve the goals of the Act. Such States join with OSM in a shared commitment to the protection of citizens—our primary customers—from abusive mining practices, to be responsive to their concerns, and to allow them full access to information needed to evaluate the effects of mining on their health, safety, general welfare, and property. This commitment also recognizes the need for clear, fair, and consistently applied policies that are not unnecessarily burdensome to the coal industry—producers of an important source of our Nation's energy.

Under SMCRA, OSM sets minimum regulatory and reclamation standards. Each primacy State ensures that coal mines are operated and reclaimed in accordance with the standards in its approved State program. The States serve as the front-line authorities for implementation and enforcement of SMCRA, while OSM maintains a State performance evaluation role and provides funding and technical assistance to States to carry out their approved programs. OSM also is responsible for taking direct enforcement action in a primacy State, if needed, to protect the public in cases of imminent harm or, following appropriate notice to the State, when a State acts in an arbitrary and capricious manner in not taking needed enforcement actions required under its approved regulatory program.

Currently there are 24 primacy states that administer and enforce regulatory programs under SMCRA. These states may amend their programs, with OSM approval, at any time so long as they remain no less effective than Federal regulatory requirements. In addition, whenever SMCRA or implementing Federal regulations are revised, OSM is required to notify the States of the

changes so that they can revise their programs accordingly to remain no less effective than the Federal requirements.

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

### II. Discussion of the Proposed Amendment

In a series of three letters dated June 28, 1993, and July 30, 1993 (Administrative Record Nos. WV-888, WV-889 and WV-893), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program that included numerous revisions to the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA § 22A-3-1 *et seq.*) and the West Virginia Surface Mining Reclamation Regulations (CSR § 38-2-1 *et seq.*)

OSM announced receipt of the proposed amendment in the August 12, 1993, **Federal Register** (58 FR 42903) and invited public comment on its adequacy. Following this initial comment period, WVDEP revised the amendment on March 12, 1994, and September 1, 1994 (Administrative Record Nos. WV-933 and WV-937). OSM reopened the comment period on August 31, 1994, September 29, 1994, and May 19, 1995, and held public meetings in Charleston, West Virginia on September 7, 1993, October 27, 1994, and May 30, 1995.

OSM and WVDEP held a telephone conference on January 18, 1995, to discuss the States revisions to the program amendment which were submitted on September 1, 1994, and announced for public comment in the September 29, 1994, **Federal Register** (59 FR 49620). This meeting was followed-up by a letter on February 15, 1995, which identified provisions in the September 1, 1994, submittal where OSM either needed further clarification or where OSM believed the proposal was less effective than the Federal rules.

The WVDEP responded by revising and resubmitting the September 1, 1994, revisions on May 8, 1995 and May 16, 1995, (Administrative Record Nos. 979A and 979B). These revisions were passed by the West Virginia Legislature as House Bill—2134. Also included were

new State initiatives found in Senate Bills—287 and 350, and House Bill—2523.

This notice requests public comment on the revised program revisions and new initiatives submitted to OSM by the WVDEP on May 8, 1995 and May 16, 1995. These revisions include the following:

**1. CSR 38-2-2.92 Definitions**

The WVDEP proposes to define "chemical treatment" as it applies to the prohibition of bond release where water treatment is necessary to bring point source discharges into compliance with effluent standards.

**2. CSR 38-2-3.1(o) Ownership and Control File**

The WVDEP proposes to add a provision which will allow permittee, upon request and with the approval of the Director, to submit and maintain a centralized ownership and control file. Any permit application which references an approved centralized ownership and control file may be determined to be complete and accurate for all permitting actions including revisions, transfers, assignments and sales.

**3. CSR 38-2-3.26 Ownership and Control Changes**

The WVDEP proposes to add provisions governing the reporting of name changes, replacements, and additions to the ownership and control information for any surface mining operation or permittee. The permittee or operator is required to notify the Director if no changes have occurred.

**4. CSR 38-2-3.27(a) Permit Renewals**

The WVDEP proposes to add a provision which will allow the Director to waive the requirements for permit renewal if the permittee certifies in writing that all coal extraction is completed, that all backfilling and regrading will be completed within 60 days prior to the expiration date of the permit and that an application for Phase I bond release will be filed prior to the expiration date of the permit. Failure to complete backfilling and regrading within 60 days prior to the expiration date of the permit will nullify the waiver.

**5. CSR 38-2-3.34 (b), (g) Improvidently Issued Permits**

The WVDEP proposes to amend paragraph (b) by inserting the phrase "in paragraph (b) of subsection 3.32 of this section" to clarify that if a permit is issued at a time in which the applicant was in violation of environmental laws

that the permit was improperly issued and must be withdrawn. Paragraph (g) is being revised to clarify that permit issuance includes permit revisions for ownership and control purposes.

**6. CSR 38-2-4.4 Infrequently Used Access Roads**

The WVDEP proposes to add a provision requiring infrequently used access roads to be designed to ensure environmental protection appropriate for their planned duration and use, and to be constructed in accordance with current prudent engineering practices and any necessary design criteria established by the Director. A statement has been added to clarify that prospecting roads are to be designed, constructed, maintained, and reclaimed in accordance with subsection 13.6 which governs prospecting roads. Cross references have also been revised.

**7. CSR 38-2-4.7(a)(1) Performance Standards for Roads**

The WVDEP proposes to add a new provision requiring that each road be designed, located, constructed, maintained, and reclaimed so as to minimize downstream sedimentation and flooding.

**8. CSR 38-2-4.12 Certification**

The WVDEP proposes to add a provision requiring that, where the certification statement for a primary road indicates a change from design standards or construction requirements in the approved permit, such changes must be documented in as-built plans and submitted as a permit revision.

**9. CSR 38-2-13.6 (a)(7), (f)(6) Prospecting Roads**

WVDEP proposes to correct a typographical error at paragraph (a)(7) and to revise paragraph (f)(6) by requiring topsoil removal and replacement in accordance with section 14.3.

**10. CSR 38-2-14.14(g)(8) Durable Rock Fills**

The WVDEP proposes to amend its rules to require that surface runoff from areas above and adjacent to durable rock fills be diverted into channels which have been designed using the best current technology available to safely pass the peak runoff from a 100 year, 24-hour precipitation event. The channel must be designed and constructed to ensure stability of the fill, control erosion, and minimize infiltration into the fill.

**11. CSR 38-2-14.15(M) Coal Processing Waste Disposal**

The WVDEP proposes to add provisions governing the placement of coal processing waste in the backfill. Disposal facilities must be designed using current prudent engineering practices and must meet any design criteria established by the regulatory authority. Designs must be certified by a qualified registered professional engineer. Under the proposal, no coal processing waste that contains acid-producing or toxic-forming material may be placed in the backfill.

**12. CSR 38-2-14.19 Disposal of Noncoal Waste**

WVDEP proposes to add provisions to regulate the disposal of noncoal waste such as grease, lubricants, garbage, abandoned machinery, lumber and other materials generated during mining activities. Under the proposal, final disposal of noncoal waste will be in accordance with a permit issued pursuant to Chapter 22, Article 15 of the Code of West Virginia (Solid Waste Management Act). Timber from clearing and grubbing operations may be wind-rowed at the projected toe of the outslope.

**13. CSR 38-2-17 Small Operator Assistance**

WVDEP proposes to increase the production limit of those operators eligible for assistance under the Small Operator Assistance Program (SOAP) from 100,000 to 300,000 tons and to provide for payment of additional services as authorized under the Energy Policy Act of 1992. WVDEP is also proposing to provide for interstate coordination and exchange of information collected under SOAP.

**14. CSR 38-2-17.3(b) Eligibility for Assistance**

WVDEP proposes to use the total attributed annual production in determining eligibility for assistance under SOAP. Production from operations where the applicant owns more than a 10 percent interest will be attributed to the applicant.

**15. CSR 38-2-17.4 Request for Assistance**

WVDEP proposes to require SOAP applicants to provide information on forms provided by the Director of WVDEP.

**16. CSR 38-2-17.7 (a)(4) Liability of SOAP Operators**

The WVDEP proposes to clarify that SOAP applicants will be liable for the cost of program services performed if

actual and attributed production for all locations exceed 300,000 tons during the 12 month period immediately following permit issuance.

#### 17. CSR 38-2C-4 Training of Blasters

WVDEP proposes to add a provision that would allow applicants for certification or recertification to complete a self-study course in lieu of the existing training program. Self-study materials would be provided by the WVDEP.

#### 18 CSR 38-2C-10.1 Violations by a Certified Blaster

WVDEP proposes to remove language authorizing the Director to issue a cessation order and/or take other action as provided by the WVSCMRA § 22-3-16 and 17 when a certified blaster is in violation of WVSCMRA § 22-3-1. The Director retains his authority to issue a notice of violation.

#### 19. CSR 38-2C-11 Penalties

WVDEP proposes to revise its rules to provide for a hearing before the Director to show cause why a blasters certification should not be suspended.

#### 20. CSR 38-D-4.4(b) Reclamation Objectives and Priorities

WVDEP proposes to clarify its objectives and priorities for abandoned mine lands reclamation projects by indicating the provision applies to "past" coal mining practices which may or may not constitute an extreme danger.

#### 21. CSR 38-2D-6.3(a) Acceptance of Gifts of Land

WVDEP proposes to remove the requirement that the director accept gifts of land in accordance with Department of Justice procedures for the acquisition of real property.

#### 22. CSR 38-2D-8.7(a) Grant Application Procedures

WVDEP proposes to remove provisions which describe the procedures for submitting a grant application to OSM for the reclamation of abandoned mine lands.

#### 23. WV § 22B-3-4(c) Environmental Quality Board Rulemaking Authority

WVDEP proposes to authorize the Environmental Quality Board to grant variances to in-stream water quality standards for coal remining operations. The standards established in the variance would exist for the term of the NPDES permit. Under the proposal, the Board will promulgate procedural rules on granting site-specific coal remining variances. At a minimum, the

procedures would include a description of the data and information required from an applicant for a variance, criteria employed by the board in its decision, and provisions for public comment and hearing. The proposed rule gives direction as to when a variance may be granted.

WVDEP gave notice to OSM that WVSCMRA § 22-3-8-6(B) was being revised to require that an operator provide the Director with proof of payment of workers compensation premiums on an annual basis, and that § 22-1-6(D)(7) was being revised to authorize the Director to employ in-house council to perform all legal services. The director finds that these revisions do not require an amendment to the West Virginia State Program pursuant to 30 CFR 732.17(c).

### III. Public Comment Procedures

OSM is extending the comment period to provide the public an opportunity to comment on the proposed revisions in the State program. In accordance with 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

#### Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

### IV. Procedural Determinations

#### Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

#### Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under

sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

#### List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 28, 1995.

**Ronald C. Recker,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 95-16378 Filed 7-3-95; 8:45 am]

BILLING CODE 4310-05-M