

on any governmental entity or the private sector.

### List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 14, 2001.

**Peter Rutledge,**

*Acting Regional Director, Western Regional Coordinating Center.*

[FR Doc. 01-13157 Filed 5-23-01; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-091-FOR]

#### West Virginia Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the West Virginia Surface Mining Reclamation rules at 38 CSR 2 as contained in House Bill 2663. The amendment submitted by the State is intended to render the West Virginia program no less effective than the Federal requirements.

**DATES:** If you submit written comments, they must be received on or before 4:00 p.m. (local time), on June 25, 2001. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. (local time), on June 18, 2001. Requests to speak at the hearing must be received by 4:00 p.m. (local time), on June 8, 2001.

**ADDRESSES:** Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the proposed amendment, a listing of any scheduled hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347-7158. E-mail: chfo@osmre.gov.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759-0515. The proposed amendment will be posted at the Department's Internet page: <http://www.dep.state.wv.us>.

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

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

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347-7158.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915-5956).

You can find later actions concerning the conditions of approval and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

##### II. Discussion of the Proposed Amendment

By letter dated May 2, 2001 (Administrative Record Number WV-1209), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program. The program amendment consists of changes to the West Virginia Surface Mining Reclamation rules at 38 CSR 2 as amended by House Bill 2663. The amendment submitted by the State is intended to render the West Virginia program no less effective than the Federal requirements.

We are not requesting comments on the proposed changes to CSR 38-2-

3.14.b.12, concerning the partial removal of coal processing refuse piles, for the following reason. In 1990, we stated that "the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of "coal" set forth in 30 CFR 700.5; i.e., ASTM Standard D 388-77, is not subject to regulation [under SMCRA]." 55 FR 21314; May 23, 1990. CSR 38-2-3.14.b.12 pertains to the removal of coal refuse that does not meet the definition of coal. Therefore, it is not subject to regulation under SMCRA, and will not be considered here.

You will find West Virginia's program amendment presented below.

##### 1. CSR 38-2-2.39 Definition of "Cumulative Impact"

This definition is being amended by deleting the existing language and adding in its place the following language.

2.39. 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 the entire projected lives through bond releases of:

2.39.a. The proposed operation;  
2.39.b. All existing operations;  
2.39.c. Any operation for which a permit application has been submitted to the Director, and;

2.39.d. All operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

##### 2. CSR 38-2-3.12.a.1. Subsidence Control Plan

This provision is being amended by adding the words "a narrative indicating" to the survey and map requirements of this subsection. As amended, this provision requires a survey, map, and a narrative indicating whether or not subsidence could cause material damage to the identified structures and water supplies.

We note that this amendment is in response to the required program amendment codified at 30 CFR 948.16(zzz). This required amendment provides that the State must amend the West Virginia program to require that the map of all lands, structures, and drinking, domestic and residential water supplies which may be materially damaged by subsidence show the type and location of all such lands, structures, and drinking, domestic and residential water supplies within the

permit and adjacent areas, and to require that the permit application include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies. For further information, see the February 9, 1999, **Federal Register** (64 FR 6201, 6206–6207).

### 3. CSR 38–2–3.14.a. Removal of Abandoned Coal Refuse Piles

This provision is being amended by changing the proviso concerning material that meets the ASTM standard of the minimum BTU value to be classified as coal. As amended, if the material at existing abandoned coal processing waste piles meets the minimum BTU value standard to be classified as coal, as set forth in ASTM standard D 388–99, and if not AML eligible, a permit application which meets all applicable requirements of this rule shall be required. Prior to this amendment, the words “and if not AML eligible” did not appear in the provision, and the provision did not require the submittal of a permit application if the material met the minimum BTU value to be classified as coal.

This amendment has been submitted to address the required regulatory program amendment codified at 30 CFR 948.16(nnnn). In the May 5, 2000, **Federal Register** (65 FR 26130, 26130–26131), we did not approve CSR 38–2–3.14.a. to the extent that it would apply to the removal of abandoned coal mine refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5. In addition, we did not approve subsection 3.14 to the extent that it could be interpreted as applying to the on-site processing of abandoned coal refuse piles. Consequently, we required at 30 CFR 948.16(nnnn) that the State amend its program to either: (1) Delete subsection 3.14; or (2) revise subsection 14 to clearly specify that its provisions apply only to activities that do not qualify as surface coal mining operations as that term is defined in 30 CFR 701.5; i.e., that subsection 3.14 does not apply to either the removal of abandoned coal mine waste piles that, on average, meet the definition of coal or to the on-site reprocessing of coal mine waste piles. We also stated that if the State chooses the second option, it should also submit the sampling protocol that will be used to determine whether the refuse piles meet the

definition of coal. The sampling protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under the State counterpart to SMCRA and the Federal regulations.

### 4. CSR 38–2–3.22.e. Base Line Surface Water Information

This provision is being amended by adding the following sentence. “Material damage to the hydrologic balance outside the permit areas means any long term or permanent change in the hydrologic balance caused by surface mining operation(s) which has a significant adverse impact on the capability of the affected water resource(s) to support existing conditions and uses.”

### 5. CSR 38–2–16.2.c.4. Bonding for Subsidence Damage

This provision is being amended by deleting the existing first two sentences. In their place, the following sentences are added.

The director shall issue a notice to the permittee that subsidence related material damage has occurred to lands, structures, or water supply, and that the permittee has ninety (90) days from the date of notice to complete repairs or replacement. The director may extend the ninety (90) day abatement period but such extension shall not exceed one (1) year from the date of the notice. Provided, however, the permittee demonstrates in writing, and the director concurs that subsidence is not complete, that not all probable subsidence related material [damage] has occurred to lands or structures; or that not all reasonably anticipated changes have occurred affecting the water supply, and that it would be unreasonable to complete repairs or replacement within the ninety (90) day abatement period.

In addition, the final existing sentence is being amended by adding the following words to the end of that sentence: “to land or structures, or the estimated cost to replace water supply.”

This amendment is intended to address the required program amendment codified at 30 CFR 948.16(ffff). For more information, see Finding 26 in the February 9, 1999, **Federal Register** (64 FR 6201, 6212–6213).

### 6. CSR 38–2–3.31.c. Federal, State, County, Municipal, or Other Local Government-Financed Highway or Other Construction Exemption

This subsection is new, and provides the following: “Funding less than fifty percent (50%) may qualify if the construction is undertaken as part of an approved reclamation project in accordance with WV Code § 22–3–28.”

This revision is intended to revise the West Virginia program to add the additional flexibility afforded by the revised Federal definition of the term “government-financed construction” at 30 CFR 707.5. For more information, see the February 12, 1999, **Federal Register** (64 FR 7469).

### 7. CSR 38–2–3.32.g. Permit Issuance—Unanticipated Event or Condition

This provision is amended by adding new language at the end of the existing one-sentence paragraph, and by adding three new subdivisions. As amended, the provision is as follows:

3.32.g. The prohibition of subdivision 3.32.c shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface mine eligible for remining under permit held by the applicant that meets the requirements of 30 CFR 773.15(4)(i). An event will be presumed to be unanticipated for purposes of this paragraph if it:

3.32.g.1. Arose after remining permit was issued.

3.32.g.2. Was related to prior mining; and

3.32.g.3. Was not identified in the remining permit.

### 8. CSR 38–2–5.2.a. Intermittent or Perennial Stream Buffer Zone

This provision is amended by deleting the words, “normal flow or gradient of the stream, adversely affect fish migration or related environmental values, materially damage the.” In addition the words “or other environmental resources” are added. As amended, the provision is as follows:

5.2.a. Intermittent or Perennial Stream. No land within one hundred feet (100') of an intermittent or perennial stream shall be disturbed by surface mining operations including roads unless specifically authorized by the Director. The Director will authorize such operations only upon finding that surface mining activities will not adversely affect the water quantity and quality or other environmental resources of the stream and will not cause or contribute to violations of applicable State or Federal water quality standards. The area not to be disturbed shall be designated a buffer zone and marked accordingly.

### 9. CSR 38–2–11.3.a.3. Surety Bonds

This provision is new, and is as follows:

11.3.a.3. Surety received after July 1, 2001 must be recognized by the treasurer of state as holding a current certificate of authority from the United

States Department of the Treasury as an acceptable surety on federal bonds.

#### 10. CSR 38-2-12.2.e. Bond Release

This provision is being amended by prohibiting bond release if water discharged requires passive treatment. The provision currently prohibits bond release if chemical treatment is needed. In addition, a new sentence is added that clarifies that measures approved in the permit and taken during mining and reclamation to prevent the formation of acid drainage shall not be considered passive treatment.

This amendment is intended to address the required program amendment codified at 30 CFR 948.16(qqq). This required amendment requires that the West Virginia program be amended to clarify that bond may not be released where passive treatment systems are used to achieve compliance with applicable effluent limitations. For more information, see Finding 2, in the February 21, 1996, **Federal Register** (61 FR 6511, 6517). As amended, the provision is as follows:

12.2.e. Notwithstanding any other provisions of this rule, no bond release or reduction will be granted if, at the time, water discharged from or affected by the operation requires chemical or passive treatment in order to comply with applicable effluent limitations or water quality standards. Measures approved in the permit and taken during mining and reclamation to prevent the formation of acid drainage shall not be considered passive treatment; Provided, That the Director may approve a request for Phase I but not Phase II or III, release if the applicant demonstrates to the satisfaction of the Director that either:  
\* \* \*

#### 11. CSR 38-2-12.4.e. Responsibility for Reclamation Costs of Forfeited Bonds

This provision is amended by deleting the words, "or other responsible party." This amendment is intended to address the required program amendment codified at 30 CFR 948.16(jjjj). For more information, see the November 12, 1999, **Federal Register** (64 FR 61506-61507). As amended, this provision is as follows:

12.4.e. The operator or permittee shall be liable for all costs in excess of the amount forfeited. The Director may commence civil, criminal or other appropriate action to collect such costs.

#### 12. CSR 38-2-14.8.a.6. Constructed Outcrop Barriers

This provision is new. This amendment is intended to address the required program amendment codified

at 30 CFR 948.16(xx). For more information, see Finding 32 in the February 21, 1996, **Federal Register** (61 FR 6511, 6524-6525), and Finding 8(a) in the October 4, 1991, **Federal Register** (56 FR 50256, 50264-50265). This new provision is as follows:

14.8.[a].6. Constructed outcrop barriers shall be designed using standard engineering procedures to inhibit slides and erosion to ensure the long-term stability of the backfill. The constructed outcrop barriers shall have a minimum static safety factor of 1.3, and where water quality is paramount, the constructed barriers shall be composed of impervious material with controlled discharge points.

#### 13. CSR 38-2-24.4. Requirements To Release Bonds

This provision is being amended by deleting language concerning an exception to the requirements to release bonds, and by adding a new proviso concerning revegetation. This amendment is intended to address the required program amendment codified at 30 CFR 948.16(pppp). For more information, see Finding 9 in the May 5, 2000, **Federal Register** (65 FR 26130, 26133). As amended, the provision is as follows:

24.4. Requirements to Release Bonds. Bond release for remaining operations shall be in accordance with all of the requirements set forth in subsection 12.2 of this rule; Provided that there is no evidence of a premature vegetation release.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), we are seeking comments, on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

#### Written Comments

If you submit written or electronic comments on the proposed amendment during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

#### Electronic Comments

Please submit Internet comments as an ASCII, Word Perfect, or Word file avoiding the use of special characters and any form of encryption. Please also

include "Attn: SPATS NO. WV-091-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347-7158.

#### Availability of Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during our regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on June 8, 2001. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

### Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

### IV. Procedural Determinations

#### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

#### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

#### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

#### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget 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 counterpart 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 counterpart federal regulation.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

#### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 14, 2001.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 01-13156 Filed 5-23-01; 8:45 am]

**BILLING CODE 4310-05-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[CA 224-0279b; FRL-6982-7]

### **Revisions to the California and Arizona State Implementation Plans, Antelope Valley Air Pollution Control District and Maricopa County Environmental Services Department**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Antelope Valley Air Pollution Control District (AVAPCD) and Maricopa County Environmental Services Department (MCESD) portions of the respective California and Arizona State Implementation Plans (SIPs). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations and automotive windshield washer fluid use. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by June 25, 2001.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection