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§ 948.10 State regulatory program approval.

The West Virginia program, as submitted on March 3, 1980, as clarified on July 16, 1980, and as resubmitted on December 19, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date and continuing until July 11, 1985, the Department of Natural Resources was deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Beginning on July 11, 1985, the Department of Energy was deemed the regulatory authority pursuant to the program transfer provisions of Enrolled Committee Substitute for House Bill 1850, as signed by the Governor of West Virginia on May 3, 1985. Beginning on October 16, 1991, the Division of Environmental Protection was deemed the regulatory authority pursuant to Enrolled Committee Substitute for House Bill 217 that was signed by the Governor on October 25, 1991. On December 3, 1991, OSM found that it was not necessary to amend the State program to effect the redesignation of the regulatory authority from the Division of Energy to the Division of Environmental Protection (58 FR 42904, August 12, 1993). Beginning on April 14, 2001, the Department of Environmental Protection was deemed the regulatory authority pursuant to Enrolled Committee Substitute for House Bill 2218. The bill, which was signed by the Governor on April 30, 2001, transferred programs and redesignated the Division of Environmental Protection as the Department of Environmental Protection within the executive branch. Copies of the conditionally approved program, as amended, are available at:

(a) Office of Surface Mining, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301–2816. Telephone: (304) 347–7158.

(b) West Virginia Department of Environmental Protection, Division of Mining and Reclamation, 10 McJunkin Road, Nitro, West Virginia 25143–2506. Telephone: (304) 759–0510.

[66 FR 67453, Dec. 28, 2001]

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

(a) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on May 11, 1998:

(1) CSR 38–2–3.14, to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal mine waste piles or to the extent that it would apply to the removal of abandoned coal refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5.

(2) CSR 38–2–3.32.g., which concerns unanticipated events or conditions.

(3) CSR 38–2–14.14.a.1., which concerns placement of excess spoil outside the permit area.

(4) CSR 38–2–23, which concerns coal extraction as part of land development activities.

(5) CSR 38–2–24.4, which concerns water quality standards for bond release.

(b) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 14, 2000, March 28, 2000, and April 6, 2000:

(1) The proviso at W.Va. Code 22–3–23(c)(2)(C) which concerns Phase III bond release where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

(2) At CSR 38–2–7.4.b.1.C.5., the phrase, ''except for ponds and impoundments located below the valley fills.''

(3) At CSR 38–2–7.4.b.1.D.2, the phrase, ''except for those areas with a slope of at least 50%.''

(4) At CSR 38–2–7.4.b.1.G.1., the word ''excessive.''

(5) At CSR 38–2–7.4.b.1.I., the new stocking standards for commercial forestry and forestry.

(6) At CSR 38–2–7.4.b.1.I.2., the phrase, ''where there is potential for excessive erosion on slopes greater than 20%.''

(7) At CSR 38–2–7.4.b.1.I.2., the words ''rock cover.''

(8) At CSR 38–2–7.4.b.1.I.3., the phrase ''or, if a commercial forestry mitigation plan is submitted to the Director, and approved and completed.''

(9) The portion of CSR 38–2–7.4.b.1.I.4. concerning in-kind mitigation plans.

(10) At CSR 38–2–14.12.a.1., the term ''commercial forestry.''

(c) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 14, 2000, March 28, 2000, and April 6, 2000:

(1) At CSR 38–2–7.5.j.3.B., the phrase, ''except for those areas with a slope of at least 50%'' is not approved, and the phrase, ''and other areas from which the applicant affirmatively demonstrates and the Director of the WVDEP finds that soil cannot reasonably be recovered'' is not approved.

(2) At CSR 38–2–7.5.j.6.A., the word ''excessive'' in the phrase ''excessive erosion'' is not approved.

(3) At CSR 38–2–7.5.o.2., the new planting arrangements and stocking standards are not approved.

(4) At CSR 38–2–7.5.o.2., the words ''rock cover'' are not approved.

(d) We are not approving the following provision of the proposed blasting-related program amendment that West Virginia submitted on October 30, 2000, and November 28, 2001: At CSR 199–1–4.8.c, the phrase ''substantial or significant'' is not approved.

(e) Section 22A–3–23(c)(3) of the Code of West Virginia is found inconsistent with Section 519(c)(3) of SMCRA to the extent that it states: ''*Provided, however*, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.''

(f) Section 22A–3–12(e) of the Code of West Virginia is found inconsistent with Section 515(e) of SMCRA.

(g) [Reserved]

(h) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 25, 2004:

(1) At CSR 38–2–7.6.e.1, the word ''excessive.''

(2) At CSR 38–2–7.7.e.1, the word ''excessive.''

(i) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on June 13, 2005, and modified on August 23, 2005:

(1) At CSR 38–2–5.4.e.1, the words ''Impoundments meeting.''

(2) At CSR 38–2–7.4.b.1.J.1(c), the deletion of the words ''surface material shall be composed of soil and the materials described in subparagraph 7.4.b.1.D.''

[48 FR 52053, Nov. 16, 1983, as amended at 50 FR 28323 and 28342, July 11, 1985; 55 FR 21337, May 23, 1990; 61 FR 6535, Feb. 21, 1996; 65 FR 26135, May 5, 2000; 65 FR 50430, Aug. 18, 2000; 65 FR 80328, Dec. 21, 2000; 68 FR 40167, July 7, 2003; 68 FR 68738, Dec. 10, 2003; 70 FR 6590, Feb. 8, 2005; 71 FR 10790, Mar. 2, 2006]

§ 948.13 State statutory and regulatory provisions set aside.

(a)–(b) [Reserved]

(c) The following wording in section 22A–3–23(c)(3) of the Code of West Virginia is inconsistent with section 519(c)(3) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

(d) Section 22A–3–12(e) of the Code of West Virginia is inconsistent with section 515(e) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside in its entirety.

(e)–(f) [Reserved]

[50 FR 35084, Aug. 29, 1985, as amended at 61 FR 6535, Feb. 21, 1996]

§ 948.15 Approval of West Virginia regulatory program amendments.

The following table lists the dates that West Virginia submitted proposed amendments to OSM, the dates when OSM published final rules approving all or portions of those amendments in the FEDERAL REGISTER, and the State statutory or regulatory citations for those amendments (or a brief description of the amendment). The amendments appear in order of the date of publication of the final rules announcing OSM's decisions on the amendments. The preambles to those final rules identify and discuss any assumptions underlying approval, any conditions placed on the approval, and any exceptions to the approval.