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**§ 948.16 Required regulatory program amendments.**

Pursuant to 30 CFR 732.17, West Virginia is required to submit the following proposed program amendments by the dates specified:

(a) By November 26, 1985, West Virginia must submit copies of proposed regulations or otherwise propose to amend its program to provide that all surface blasting operations (including those using less than five pounds and those involving surface activities at underground mining operations) shall be conducted under the direction of a certified blaster.

(b)-(cc) [Reserved]

(dd) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 38-2-9.3 of its surface mining reclamation regulations or otherwise propose to amend its program to establish productivity success standards for grazing land, pasture land and cropland; require use of the 90 percent statistical confidence interval with a one-sided test using a 0.10 alpha error in data analysis and in the design of sampling techniques; and require that revegetation success be judged on the basis of the vegetation's effectiveness for the postmining land use and in meeting the general revegetation and reclamation plan requirements of Subsections 9.1 and 9.2. Furthermore, by that date, West Virginia shall submit for OSM approval its selected productivity and revegetation sampling techniques to be used when evaluating the success of ground cover, stocking or production as required by 30 CFR 816.116 and 817.116.

(ee) By April 30, 1991, West Virginia shall submit documentation that the U.S. Soil Conservation Service (SCS) has been consulted with respect to the nature and extent of the prime farmland reconnaissance inspection required under Subsection 38-2-10.1 of the State's surface mining reclamation regulations. In addition, the State shall either delete paragraphs (a)(2) and (a)(3) of Subsection 38-2-10.2 or submit documentation that the SCS

State Conservationist concurs with the negative determination criteria set forth in these paragraphs.

(ff)-(nn) [Reserved]

(oo) By June 1, 1992, West Virginia shall submit proposed revisions to subsection 38-2-5.4(b)(8) of its surface mining reclamation regulations to require that excavated sediment control structures which are at ground level and which have an open exit channel constructed of non-erodible material be designed to pass the peak discharge of a 25-year, 24-hour precipitation event.

(pp)-(ss) [Reserved]

(tt) By June 1, 1992, West Virginia shall submit proposed revisions to subsections 38-2-5.4(b)(1) and 5.4(d)(1) to require that all structures be certified as having been built in accordance with the detailed designs submitted and approved pursuant to subsection 3.6(h)(4), and to require that as-built plans be reviewed and approved by the regulatory authority as permit revisions.

(uu)-(ww) [Reserved]

(xx) By August 1, 1996, West Virginia shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise subsection CSR 38-2-14.8(a) to specify design requirements for constructed outcrop barriers that will be the equivalent of natural barriers and will assure the protection of water quality and insure the long-term stability of the backfill.

(yy)-(iii) [Reserved]

(jjj) By December 1, 1995, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise §22-3-11(g) of the Code of West Virginia and §38-2-12.5(d) of the West Virginia Code of State Regulations to remove the limitation on the expenditure of funds for water treatment or to otherwise provide for the treatment of polluted water discharged from all bond forfeiture sites.

(kkk) By December 1, 1995, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together

with a timetable for adoption, to remove the provision of §22-3-11(g) of the Code of West Virginia that allows collection of the special reclamation tax only when the special reclamation fund's liabilities exceed its assets.

(lll) By December 1, 1995, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to eliminate the deficit in the State's alternative bonding system and to ensure that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites.

(mmm) [Reserved]

(nnn) By September 14, 1998, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise Section 22B-1-7(d) to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the West Virginia Code.

(ooo) By September 14, 1998, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise Section 22B-1-7(h) by removing reference to Article 3, Chapter 22.

(ppp) [Reserved]

(qqq) By August 1, 1996, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR §38-2-2.20, or otherwise amend the West Virginia program to clarify that bond may not be released where passive treatment systems are used to achieve compliance with applicable effluent limitations.

(rrr) [Reserved]

(sss) By August 1, 1996, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR §38-2-14.5(h) and §22-3-24(b) to clarify that the replacement of water supply can only be waived under the conditions set forth in the definition of "Replacement

of water supply," paragraph (b), at 30 CFR 701.5.

(ttt)—(uuu) [Reserved]

(vvv) By January 15, 1997, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise the West Virginia program as follows:

(1) Amend the West Virginia program to be consistent with 30 CFR 701.11(e)(2) by clarifying that the exemption at CSR 38-2-3.8(c) does not apply to (1) the requirements for new and existing coal mine waste disposal facilities; and (2) the requirements to restore the land to approximate original contour.

(2) Amend CSR 38-2-4.12 to reinstate the following deleted language: "and submitted for approval to the Director as a permit revision."

(3) Amend the West Virginia program by clarifying that the requirements at CSR 38-2-5.4(c) also apply to slurry impoundments.

(4) Amend CSR 38-2-14.15(m), or otherwise amend the West Virginia program to require compliance with 30 CFR 816/817.81 (b), (d), and (e) regarding coal refuse disposal, foundation investigations and emergency procedures and to clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other material of low permeability.

(www) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to adopt reinstatement procedures similar to its transfer requirements contained in CSR 38-2-3.25 and to allow for public participation, require that the revoked permit meet the appropriate permitting requirements of the WVSCMRA, and require that the mining and reclamation plan be modified to address

any outstanding violations for any permit reinstated pursuant to § 22-3-17(b) of the WVSCMRA.

(xxx) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to require that West Virginia amend its program by changing the phrase "land and water resources" to "land *or* water resources", in the definition of "substantially disturb" at 38-2-2.120, or by otherwise making it clear that the term "substantially disturb", for the purposes of prospecting, includes a significant impact on either land or water resources.

(yyy) [Reserved]

(zzz) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38-2-3.12.a.1., or otherwise 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.

(aaaa) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise CSR 38-2-3.12.a.2., or otherwise amend the West Virginia program to require that the water supply survey required by CSR 38-2-3.12.a.2. include all drinking, domestic, and residential water supplies within the permit area and adjacent area, without limitation by an angle of draw, that could be contaminated, diminished, or interrupted by subsidence.

(bbbb) By April 28, 2000, West Virginia must submit either a proposed

amendment or a description of an amendment to be proposed, together with a timetable for adoption to revise 38-2-3.12.a.2., or otherwise amend the West Virginia program to require that the permit applicant pay for any technical assessment or engineering evaluation used to determine the premining quality and quantity of drinking, domestic or residential water supplies, and to require that the applicant provide copies of any technical assessment or engineering evaluation to the property owner and to the regulatory authority.

(ccc)-(eeee) [Reserved]

(ffff) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend 38-2-16.2.c.4., or otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5), which provide that an extension of the 90-day abatement period may be granted for one of only three reasons: that subsidence is not complete; that not all subsidence related material damage has occurred; or that not all reasonably anticipated changes have occurred affecting the protected water supply.

(gggg) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend 38-2-16.2.c.4., or to otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5) by requiring additional bond whenever protected water supplies are contaminated, diminished or interrupted by underground mining operations conducted after October 24, 1992. The amount of the additional bond must be adequate to cover the estimated cost of replacing the affected water supply.

(hhhh) By April 12, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption to amend CSR 38-2-16.2.c.4., or to otherwise amend the West Virginia program, to be no less effective than the Federal regulations at 30 CFR 817.121(c)(5), by

requiring that the 90-day period before which additional bond must be posted begin to run from the date of occurrence of subsidence-related material damage.

(iii) By July 13, 1999, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to:

(1) Amend section 22-3-13(c)(3) of the West Virginia program to remove the phrase "or fish and wildlife habitat and recreation lands"; and

(2) Amend "public use" at section 22-3-13(c)(3) to include the term "facility" and to further clarify that the term will be interpreted the same as "public facility (including recreation facilities) use" at SMCRA section 515(c)(3).

(jjj) By January 11, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the words "other responsible party" at CSR 38-2-12.4.e.

(kkkk) By January 11, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the words "upon request" at W. VA. Code 22-3-13a(g), or otherwise amend its program to require that a copy of the pre-blast survey be provided to the owner and/or occupant even if the owner or occupant does not specifically request a copy.

(lll) By January 11, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the phrase "or the surface impacts of the underground mining methods" from 22-3-13a(j)(2), or otherwise amend its program to clarify that the surface blasting impacts of underground mining operations are subject to the requirements of 22-3-13a.

(mmmm) By January 11, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the phrase "of overburden and coal" from W.Va. Code 22-3-30a(a), or

to otherwise clarify that its general surface coal mining blasting laws and regulations apply to all blasting at surface coal mining and reclamation operations and surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

(nnnn) By July 5, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to either delete CSR 38-2-3.14 or revise CSR 38-2-3.14 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 700.5; 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. 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's SMCRA regulatory program.

(oooo) By July 5, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR 38-2-23.

(pppp) By July 5, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR 38-2-24.4.

[50 FR 28324, July 11, 1985 and 50 FR 38652, Sept. 24, 1985, as amended at 51 FR 9651, Mar. 20, 1986; 51 FR 40796, Nov. 10, 1986; 55 FR 21338, May 23, 1990; 56 FR 50269, Oct. 4, 1991; 56 FR 58311, Nov. 19, 1991; 60 FR 51918, Oct. 4, 1995; 61 FR 6536, Feb. 21, 1996; 61 FR 38387, July 24, 1996; 63 FR 37777, July 14, 1998; 64 FR 6217, Feb. 9, 1999; 64 26295, May 14, 1999; 64 FR 53203, Oct. 1, 1999; 64 FR 61507, Nov. 12, 1999; 64 FR 61518, Nov. 12, 1999; 65 FR 10390, Feb. 28, 2000; 65 FR 26136, May 5, 2000]