

drainage and sediment control systems, fish and wildlife considerations, revegetation, performance standards, inspection and enforcement, coal refuse, and performance standards applicable to remining operations. The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on May 14, 2003. If requested, we will hold a public hearing on the amendment on May 9, 2003. We will accept requests to speak at a hearing until 4 p.m. (local time), on April 29, 2003.

ADDRESSES: You should mail or hand-deliver 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, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the 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) 759-0510. Copies of Enrolled House Bills 2603, 2881, and 2882 and summaries of changes to the State's Coal Related Dam Safety Rules and the Surface Mining Reclamation Rules will be posted at the Department's Internet page: <http://www.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, PO 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. Internet: chfo@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * * ; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated March 18, 2003, the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program (Administrative Record Number WV-1352) under SMCRA (30 U.S.C. 1201 *et seq.*). West Virginia sent the amendment in response to the required program amendments at 30 CFR 948.16(nnn), (ooo), and (qqqq) and to include the changes made at its own initiative.

The program amendment consists of changes to the W. Va. Code as contained in House Bills 2881 and 2882, and changes to the Coal Related Dam Safety Rule at CSR 38-4 and to the Surface Coal Mining and Reclamation Regulations at CSR 38-2 as contained in House Bill 2603. The amendment concerns a variety of topics including bond release, dam safety, permit application requirements, drainage and sediment control systems, fish and

wildlife considerations, revegetation, performance standards, inspection and enforcement, coal refuse, and performance standards applicable to remining operations. The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations.

A. The provisions of the W. Va. Code that West Virginia proposes to revise as contained in House Bills 2881 and 2882 are:

W. Va. Code 22-3-23, concerning release of bond or deposits, is amended by changing the term "director" to "secretary" in numerous locations.

W. Va. Code 22-3-23(c)(1)(C), concerning bond release for all operations except those with an approved variance from approximate original contour (AOC), is amended by adding the following language to the end of the last sentence: "where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter." As amended, the sentence reads as follows:

Provided, however, that the release may be made where the quality of the untreated post mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

W. Va. Code 22-3-23(c)(2)(C), concerning bond release for operations with an approved variance from AOC, is amended by adding the following language to the end of the last sentence: "where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter." As amended, the sentence reads as follows:

Provided, however, that the release may be made where the quality of the untreated post mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

W. Va. Code 22-3-23(c)(2)(C), concerning bond release, is amended by deleting the reference to subdivision 3 and requiring compliance with the bond release scheduling requirements of subdivisions 1 and 2 of this subsection.

W. Va. Code 22B-1-7, concerning appeals to boards, is amended by changing the term "director" to "secretary" in several locations.

W. Va. Code 22B-1-7(d), concerning appeals to boards, is amended by adding a proviso that unjust hardship shall not be grounds for granting a stay or suspension of an order, permit or