

official action for an order issued pursuant to W. Va. Code 22-3.

W. Va. Code 22B-1-7(h), concerning appeals to boards, is amended by deleting the reference to article 3 in regard to appeals to the environmental quality board.

B. The provisions of the Code of State Regulations that West Virginia proposes to revise as contained in House Bill 2603 are:

Surface Mining Reclamation
Regulations at CSR 38-2

CSR 38-2 is amended by updating the name of the U.S. Department of Agriculture, Natural Resources Conservation Service (formerly Soil Conservation Service) in several locations, *i.e.*, subsections 3.2.c, 3.20, 10.2.a.4, 10.3.a.1, 10.4.c.1, 10.6.b.2, 10.6.b.7.A, 10.6.b.7.B, and 10.6.b.8.

CSR 38-2-3.7.d, concerning disposal of excess spoil, is new and adds a requirement for a survey of the watershed identifying all man made structures and residents in proximity to the disposal area to determine potential storm runoff impacts. At least 30 days prior to any beginning of placement of material, the accuracy of the survey shall be field verified. Any changes shall be documented and brought to the attention of the Secretary to determine if there is a need to revise the permit.

CSR 38-2-3.22.f.5.A, A.1 and A.2, concerning the requirement to restore, protect, or replace water supply of present water users, is new and adds that the hydrologic reclamation plan shall contain a description of the measures to be taken to replace water supplies that are contaminated, diminished, or interrupted. The plan shall include an identification of the water replacement, which includes quantity and quality descriptions including discharge rates, or usage and depth to water; and documentation that the development of identified water replacement is feasible and that the financial resources necessary to replace the affected water supply are available.

CSR 38-2-3.31.a, concerning Federal, State, county, municipal, or other local government-financed highway or other construction exemption, is amended by adding a provision that may allow funding at less than 50 percent to qualify if the construction is undertaken as an approved government reclamation contract.

CSR 38-2-5.4.b.4, concerning sediment control, is amended by adding language to provide that all sediment control systems for valley fills, including durable rock fills, shall be designed for the entire disturbed acreage and shall include a schedule indicating

timing and sequence of construction over the life of the fill.

CSR 38-2-5.4.b.11, concerning the control of water discharge, is amended by adding language to provide that the location of discharge points and the volume to be released shall not cause a net increase in peak runoff from the proposed permit area when compared to premining conditions and shall be compatible with the post-mining configuration and adequately address watershed transfer.

CSR 38-2-5.6 is a new provision concerning storm water runoff and requires each permit application to contain a storm water runoff analysis consistent with subsections 5.6.a through 5.6.d.1.e. The new language provides as follows:

5.6.a. Each application for a permit shall contain a storm water runoff analysis which includes the following:

5.6.a.1. An analysis showing the changes in storm runoff caused by the proposed operations(s) using standard engineering and hydrologic practices and assumptions.

5.6.a.2. The analysis will evaluate pre-mining, worst case during mining, and post-mining (Phase III standards) conditions. The storm used for the analysis will be the largest required design storm for any sediment control or other water retention structure proposed in the application. The analysis must take into account all allowable operational clearing and grubbing activities. The applicant will establish evaluation points on a case-by-case basis depending on site specific conditions including, but not limited to, type of operation and proximity of man-made structures.

5.6.a.3. The worst case during mining and post-mining evaluations must show no net increase in peak runoff compared to the pre-mining evaluation.

5.6.b. Each application for a permit shall contain a runoff-monitoring plan which shall include, but is not limited to, the installation and maintenance of rain gauges. The plan shall be specific to local conditions. All operations must record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) storm event or greater must be reported to the Secretary within twenty-four (24) hours and shall include the results of a permit wide drainage system inspection.

5.6.c. Each application for a permit shall contain a sediment retention plan to minimize downstream sediment deposition within the watershed resulting from precipitation events. Sediment retention plans may include, but are not limited to decant ponds, secondary control structures, increased

frequency for cleaning out sediment control structures, or other methods approved by the Secretary.

5.6.d. After the first day of January two thousand four, all active mining operations must be consistent with the requirements of this subdivision. The permittee must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval within the schedule described in 5.6.d.1. Full compliance [compliance] with the permit revision shall be accomplished within 180 days from the date of Secretary approval. Active mining operations for the purpose of this subsection exclude permits that have obtained at least a Phase I release and are vegetated. Provided, however, permits or portions of permits that meet at least Phase I standards and are vegetated will be considered on a case by case basis.

5.6.d.1. Schedule of Submittal

5.6.d.1.a. Within 180 days from the first day of January two thousand four all active mining operations with permitted acreage greater than 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.b. Within 360 days from the first day of January two thousand four all active mining operations with permitted acreage between 200 and 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.c. Within 540 days from the first day of January two thousand four all active mining operations with permitted acreage between 100 and less than 200 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.d. Within 720 days from the first day of January two thousand four all active mining operations with permitted acreage between 50 and less than 100 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.e. Within 900 days from the first day of January two thousand four all active mining operations with permitted acreage less than 50 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval. Provided, however, an exemption may be