

considered on a case-by-case basis. Furthermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement.

CSR 38-2-8.2.e, concerning fish and wildlife considerations, is amended by adding language to provide that in constructing a windrow, timber shall not be placed in a manner or location to block natural drainways.

CSR 38-2-9.1.a, concerning revegetation, is amended by adding language to provide that reforestation opportunities must be maximized for all areas not directly associated with the primary approved postmining land use and requiring revegetation plans for those areas to be reforested to include a map, a planting schedule and stocking rates.

CSR 38-2-9.3.d, concerning standards for evaluating vegetative cover, is amended by deleting the words "from the Handbook," so that sampling techniques will no longer be taken from the State's revegetation handbook.

CSR 38-2-9.3.f, concerning standards for evaluating vegetative cover and productivity, is amended by deleting the words "in the Handbook," and replacing those words with the words "by the Secretary." The effect of the change is that vegetation ground cover and productivity levels will be set by the Secretary of the WVDEP, rather than as provided in the State's revegetation handbook.

CSR 38-2-14.5.h, concerning hydrologic balance, is amended by adding a proviso that the requirement for replacement of an affected water supply that is needed for the land use in existence at the time of contamination, diminution or interruption or where the affected water supply is necessary to achieve the post-mining land use shall not be waived.

CSR 38-2-14.14.g.1, concerning durable rock fills, is amended by adding language to provide that fills proposed after January 1, 2004, may only be approved with the design, construction, and use of a single lift fill if they include an erosion protection zone or a durable rock fill designed to be reclaimed from the toe [toe] upward.

CSR 38-2-14.14.g.2 is new and adds additional design specifications and requirements for single lift fills with an erosion protection zone at subsections 14.14.g.2.A through 14.14.g.2.B.3. The new language provides as follows:

14.14.g.2.A. Erosion Protection Zone. The erosion protection zone is a designed structure constructed to provide energy dissipation to minimize erosion vulnerability and may extend beyond the designed toe of the fill.

14.14.g.2.A.1. The effective length of the erosion protection zone shall be at least one half the height of the fill measured to the target fill elevation or fill design elevation as defined in the approximate original contour procedures and shall be designed to provide a continuous underdrain extension from the fill through and beneath the erosion protection zone.

14.14.g.2.A.2. The height of the erosion protection zone shall be sufficient to accommodate designed flow from the underdrain of the fill and shall comply with 14.14.e.1. of this rule.

14.14.g.2.A.3. The erosion protection zone shall be constructed of durable rock as defined in 14.14.g.1. originating from a permit area and shall be of sufficient gradation to satisfy the underdrain function of the fill.

14.14.g.2.A.4. The outer slope or face of the erosion protection zone shall be no steeper than two (2) horizontal or [to] one (1) vertical (2:1). The top of the erosion protection zone shall slope toward the fill at a three (3) to five (5) percent grade and slope laterally from the center toward the sides at one (1) percent grade to discharge channels capable of passing the peak runoff of a one-hundred (100) year, twenty-four (24) hour precipitation event.

14.14.g.2.A.5. Prior to commencement of single lift construction of the durable rock fill, the erosion protection zone must be seeded and certified by a registered professional engineer as a critical phase of fill construction. The erosion protection zone shall be maintained until completion of reclamation of the fill.

14.14.g.2.A.6. Unless otherwise approved in the reclamation plan, the erosion protection zone shall be removed and the area upon which it was located shall be regraded and revegetated in accordance with the reclamation plan.

14.14.g.2.B. Single Lift Construction Requirements.

14.14.g.2.B.1. Excess spoil disposal shall commence at the head of the hollow and proceed downstream to the final toe. Unless required for construction of the underdrain, there shall be no material placed in the fill from the sides of the valley more than 300 feet ahead of the advancing toe. Exceptions from side placement of material limits may be approved by the Secretary if requested and the applicant can demonstrate through sound engineering that it is necessary to facilitate access to isolated coal seams, the head of the hollow or otherwise facilitates fill stability, erosion, or drainage control.

14.14.g.2.B.2. During construction, the fill shall be designed and maintained in such a manner as to prevent water from discharging over the face of the fill.

14.14.g.2.B.2.(a). The top of the fill shall be configured to prevent water from discharging over the face of the fill and to direct water to the sides of the fill.

14.14.g.2.B.2.(b). Water discharging along the edges of the fill shall be conveyed in such a manner to minimize erosion along the edges of the fill.

14.14.g.2.B.3. Reclamation of the fill shall be initiated from the top of the fill and progress to the toe with concurrent construction of terraces and permanent drainage.

CSR 38-2-14.14.g.3 is new and adds design specifications and requirements at 14.14.g.3.A through 14.14.g.3.B for durable rock fills designed to be reclaimed from the toe upward. The new language provides as follows:

14.14.g.3.A. Transportation of Material to toe of fill. The method of transporting material to the toe of the fill shall be specified in the application and shall include a plan for inclement weather dumping. The means of transporting material to the toe may be by any method authorized by the Act and this rule and is not limited to the use of roads.

14.14.g.3.A.1. Constructed roads shall be graded and sloped in such a manner that water does not discharge over the face. Sumps shall be constructed along the road in switchback areas and shall be located at least 15 feet from the outslope.

14.14.g.3.A.2. The constructed road shall be in compliance with all applicable State and Federal safety requirements. The design criteria to comply with all applicable State and Federal safety requirements shall be included in the permit.

14.14.g.3.B. Once the necessary volume of material has been transported to the toe of the fill, face construction and installation of terraces and permanent drainage shall commence. The face construction and reclamation of the fill shall be from the bottom up with progressive construction of terraces and permanent drainage in dumping increments not to exceed 100 feet.

CSR 38-2-14.15.a.2, concerning contemporaneous reclamation standards, is amended by adding language to provide that the mining and reclamation plan shall contain information on how mining and reclamation operations will be coordinated so as to minimize surface water runoff, and comply with the storm water runoff plan.