

CSR 38-2-14.15.c, concerning reclaimed area, is amended by adding the words "and seeding has occurred" to the definition of reclaimed acreage that is applicable to this subsection. As amended, the definition of reclaimed area provides that for purposes of this subsection, reclaimed acreage shall be that portion of the permit area which has at a minimum been fully regraded and stabilized in accordance with the reclamation plan, meets Phase I standards, and seeding has occurred.

CSR 38-2-14.15.g, concerning contemporaneous reclamation variance—permit applications, is amended by adding language to require a demonstration that the variance being sought will comply with CSR 38-2-5.6 concerning the new storm water runoff provisions.

CSR 38-2-17.1, concerning Small Operator Assistance Program, is amended by adding that the Secretary of WVDEP shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to CSR 38-2-17.

CSR 38-2-20.6.a, concerning civil penalty assessments, is amended by deleting all language concerning an "assessment officer," and adding language concerning the Secretary of WVDEP. The new language provides that the Secretary shall not determine the proposed penalty assessment until such time as an inspection of the violation has been conducted and the findings of that inspection are submitted to the Secretary in writing.

CSR 38-2-20.6.c, concerning notice of civil penalty assessment, is amended by deleting two sentences that provide that the "Secretary shall also give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within thirty (30) days following the date of the conference. The reasons for reassessment shall be documented in the file by the assessment officer." Also, the following sentence is added immediately before the existing last sentence: "The reasons for reassessment shall be documented in the file by the Secretary."

CSR 38-2-20.6.d, concerning notice of informal assessment conference, is amended by adding language to provide that the Secretary shall arrange for a conference to review the proposed assessment or reassessment, upon written request if received within 15 days from the date the proposed assessment or reassessment is received. Language is also added to provide that

the operator shall forward the amount of proposed penalty assessment to the Secretary for placement in an interest bearing escrow account, and that the Secretary shall assign an assessment officer to hold the assessment conference.

CSR 38-2-20.6.e, concerning informal conference, is amended by adding language to provide that the assessment officer shall give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within 30 days following the date of the conference. The reasons for the assessment officer's action shall be documented in the file.

CSR 38-2-20.6.f is new and adds the requirement that an increase or reduction of a proposed civil penalty of more than 25 percent and more than \$500.00 shall not be final and binding until approved by the Secretary.

CSR 38-2-20.6.j, concerning escrow, is amended by adding the phrase "an informal conference or" immediately before the words "judicial review of a proposed assessment." In addition, the words "continue to" are deleted immediately before the words "be held in escrow." The new language provides that if a person requests an informal conference or judicial review of a proposed assessment, the proposed penalty assessment shall be held in escrow until completion of the judicial review.

CSR 38-2-22.4.g.3.A, concerning coal refuse, impoundments designed without discharge structures, is amended by deleting the second sentence and adding three sentences in its place. The new language requires that a system shall be designed to dewater the impoundment of the probable maximum storm in 10 days by pumping or other means. The new language requires the requirements of the Coal Related Dam Safety Rule at CSR 38-4-25.14, concerning removal of storm water from impoundments, shall be met. For existing structures exceeding the minimum 2 PMP volume requirement, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs.

CSR 38-2-22.4.i.6 is new and concerns the use of corrugated metal pipes in spillways. This provision provides that corrugated metal pipes shall not be used in new or unconstructed refuse impoundments or slurry cells. If an existing corrugated metal pipe has developed leaks or otherwise deteriorated so as to cause the pipe to not function properly and such deterioration constitutes a hazard to the proper operation of the impoundment, the Secretary will require the corrugated

metal pipe to be either repaired or replaced.

CSR 38-2-24.2.a, concerning remining operations—revegetation, is amended by deleting the words "in the Handbook" at the end of the last sentence, and replacing those words with the words "by the Secretary." The new revision provides that the determination of premining [remining] ground cover success and productivity shall be made using sampling techniques described by the Secretary.

CSR 38-2-24.3, concerning remining operations—water quality, is amended by adding the following language at the end of the last sentence: "or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR 434 as amended." The new revision provides that a coal remining operation which began after February 4, 1987, and on a site which was mined prior to August 3, 1977, may qualify for the water quality exemptions set forth in subsection (p), section 301 of the Federal Clean Water Act, as amended or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR Part 434 as amended.

CSR 38-2-24.4, concerning remining operations—requirements to release bonds, is amended by adding the following language at the end of the first sentence: "and the terms and conditions set forth in the NPDES [National Pollutant Discharge Elimination System] Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended." The new revision provides that bond release for remining operations shall be in accordance with all of the requirements set forth in subsection 12.2 of this rule and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended.

#### Coal Related Dam Safety Rules at CSR 38-4

CSR 38-4-3.4.c, concerning hazard evaluation, is amended by deleting the existing heading and renaming the provision "Assessment of Hazards and Consequences of Failure." In addition, the following language is added as an introductory paragraph:

All new applications and expansions to existing impoundments must submit a complete Assessment of Hazards and Consequences of Failure (AHCF) in narrative form, certified by a Registered Professional Engineer (RPE), that addresses potential risks and impacts resulting from failure that could