

occur from the construction and/or operation of the facility and addresses the following:

CSR 38–4–7.1.f.3.A, concerning Class C impoundments designed without discharge structures, is amended by deleting the existing second sentence and replacing that sentence with the following three sentences. “A system shall be designed to dewater the impoundment of the probable maximum storm in ten (10) days by pumping or by other means. The requirements of 25.14 shall also be met. For existing structures exceeding the minimum 2 PMP volume requirements, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs.”

CSR 38–4–7.1.n is new and concerns use of corrugated metal pipes for spillways. The new language provides as follows:

Corrugated metal pipes, whether coated or uncoated, 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. Provided, however, sediment control or other water retention structures used for the treatment of effluent and designated as Class A Dams under 3.4.b of this rule are exempt from this prohibition.

CSR 38–4–8.1, concerning subsidence evaluation of the site and the dam and its storage area, is amended by revising the phrase “that coal pillars and floor are strong” to read “that the coal pillars, roofs and floor are strong.” The last two existing sentences are deleted, and the new last sentence is amended by adding, at the end, the words “or are otherwise capable of preventing significant subsidence impacts, in accordance with 8.2 and 8.3 of this rule.” The effect of this change is to add this requirement as an alternative condition for allowing dams to be constructed over underground workings.

CSR 38–4–8.2.a, concerning basin, is new and provides as follows:

There shall be no underground mining in a safety zone that extends horizontally 200 feet from the high water mark of an impoundment and vertically to a depth that provides for a minimum thickness of 100 feet of solid strata between the bottom of the pool and any mining. The presence of any mine workings within this safety zone is prohibited unless the potential subsidence effects are mitigated by injection grouting or otherwise filling the mine related voids completely. Alternately, such risk can be mitigated by providing constructed barriers, grouting or other means to establish equivalent protection that will comply with

the safety zone dimensions. Coal extraction of 80 percent or more is prohibited unless at a depth greater than 60 times the coal extraction thickness or at a depth where the maximum tensile strain at original ground is less than 5.0 mm/m (0.5%), whichever is greater. The Secretary may impose other limitations as specified by BM IC 8741, barrier analysis, other pertinent analysis or due to conditions such as fracturing, which may require a larger safety zone or further limitations in coal extraction.

CSR 38–4–8.2.b, concerning embankment, is new and provides as follows:

There shall be no mining in a safety zone under the structural embankment measured outward 200 feet in all directions, downward 350 feet and then outward at a dip of 65° from the horizontal, unless acceptable pillar stability and/or strain effects are confirmed by a design evaluation to be certified by an RPE. Also, the related AHCF must clearly demonstrate that the facility will have a low risk of impact to the public and the environment. Existing mine workings within this safety zone having the potential to cause significant subsidence impacts are prohibited unless those effects are mitigated by grouting, filling the mine related voids or providing comparable protection. Additional underground mining may be subsequently approved in the embankment safety zone only if a design evaluation, certified by an RPE, demonstrates that no significant impacts from subsidence can result.

CSR 38–4–8.2.c, concerning existing impoundments, is new and provides as follows:

Existing impoundments that currently have mining within the safety zones must be evaluated in accordance with this section and 3.4.c. of this rule. Remedial measures shall be implemented as necessary to eliminate or reduce the potential impact on the public and/or the environment. Remedial measures may include, but are not limited to, constructed barriers, grouting of underground works and back stowing of mines.

CSR 38–4–8.3, concerning safety factors applicable to new, revised, and existing impoundment facilities, is new and provides as follows:

A detailed engineering design evaluation of the embankment and impoundment basin areas shall be conducted to assure protection of the environment and public. The engineering design analysis shall demonstrate that appropriate safety factors exist. Major design considerations of this engineering analysis are embankment stability, pillar design, outcrop barrier design, and any other design aspects as necessary to manage risk. The adequacy of calculated safety factors should be determined by applying appropriate regulatory standards. For design applications where regulatory standards do not exist, the AHCF should be the basis used to derive acceptable safety factors.

CSR 38–4–25.14 concerning removal of storm water in the impoundment is new and provides as follows:

Storm water in the impoundment shall be removed as specified in the design requirements. In addition, the slurry impoundment pool shall be maintained at the lowest practical pool level based upon the design requirements and the AHCF. The mechanical storm dewatering system shall be installed as designed and maintained properly with the system being tested monthly.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. WV–098–FOR” and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from