

land use or the reestablishment of the vegetative cover or (2) cause or contribute to the violation of water quality standards be filled, regraded, or otherwise stabilized. We understand the amended State provision to mean that a permittee is generally not authorized to repair rills and gullies, except those rills and gullies that are unstable and/or disrupt the approved postmining land use, the establishment of vegetative cover, or cause or contribute to a violation of water quality standards for the receiving stream.

An area of potential concern with this provision is that it does not explicitly require the repair of rills and gullies that disrupt the approved postmining land use, the establishment of vegetative cover, or cause or contribute to a violation of water quality standards for the receiving stream. On the other hand, the proposed provision in no way prohibits the repair of such rills and gullies. Moreover, the approved State program already requires restoration of the premining land use, or establishment of an approved alternative postmining land use after mining, (CSR 38–2–7.1.a., 7.3., respectively), the establishment of vegetative cover (38–2–7.4.b.1.G), and compliance with applicable water quality standards (CSR 38–2–14.5.b). It necessarily follows from these provisions that rills and gullies that could prevent compliance with the above requirements must be filled, regraded, or otherwise stabilized. For this reason, we find that the proposed amendment at CSR 38–2–7.5.j.6.B, taken in concert with the above-referenced State program requirements, does not render the program less effective than 30 CFR 816.95(b) and can be approved so long as it is implemented in a manner consistent with that Federal provision. If, in future reviews, we should determine that West Virginia is implementing this provision in a manner that is inconsistent with this finding, a further amendment may be required. In addition, we find that this amendment satisfies the required program amendment codified at 30 CFR 948.16(nnnnn), which can, therefore, be removed.

20. 38–2–7.5.o.2. Phase II Bond Release for Homesteads

This provision is amended by deleting the words “rock cover” from the list that defines “ground cover.” This amendment is intended to satisfy the required program amendment codified at 30 CFR 948.16(qqqqq), which requires the deletion of the words “rock cover” from CSR 38–2–7.5.o.2. We find that the proposed amendment satisfies the

required program amendment at 30 CFR 948.16(qqqqq) and can be approved. In addition, we find that 30 CFR 948.16(qqqqq) can be removed.

21. 38–2–10.4.a.1.D. Prime Farmland

This is a new provision and provides as follows:

10.4.a.1.D. The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, constructed during mining and reclamation must be located within the post reclamation non-prime farmland portions of the permit area. The creation of such water bodies must be approved by the Department of Environmental Protection and have the consent of all affected property owners within the permit area.

We find that this provision, although codified as a performance standard, is substantively identical to the Federal counterpart regulations at 30 CFR 785.17(e)(5) and can be approved because the State’s permit findings for prime farmland at subsection 3.20 would require compliance with it.

22. 38–2–11.5. Open Acre Limit Bonding

This subsection concerning open acre limit bonding has been deleted. In its submittal of this amendment, WVDEP stated that CSR 38–2–11.5 was deleted because these bonding provisions were obsolete and no longer utilized in the State. There is no Federal counterpart to this deleted provision. However, we find that its deletion does not render the West Virginia program less effective than the Federal regulations and can be approved.

23. 38–2–11.5 (formerly 11.6) Site Specific Bonding

Subdivision 38–2–11.5.a. was amended by deleting a requirement in the fifth paragraph that existing permits be reviewed at mid-term to determine adequacy of existing bond. As amended, bond adequacy would be evaluated only at the time of permit renewal. In addition, the bond adequacy determination criteria at CSR 38–2–11.5.a.1 through a.5 are deleted. Finally, the paragraph following 38–2–11.5.a.5., concerning operations with inactive status, was deleted.

In its submittal of these revisions, WVDEP stated that the purpose of these amendments was to update this section. The Federal regulations at 30 CFR 800.15(a), concerning adjustment of bond amount, provide that the amount of the permittee’s bond or deposit shall be adjusted from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. In addition, 30

CFR 774.10 requires regulatory authorities to review outstanding permits during the term of the permit. The deletion of the requirement for mid-term review at CSR 38–2–11.5.a appears to render the West Virginia program less effective than the Federal requirements at 30 CFR 774.10 and 800.15(a). However, W. Va. Code 22–3–19(c) continues to require the mid-term review, wherein the WVDEP may require reasonable revisions or modifications of a permit, based on written findings.

The deletion of the bond adequacy determination criteria at 38–2–11.5.a.1. through 11.5.a.5. does not render the State rules less effective than the Federal regulations. Despite the deletion of the criteria at 11.5.a.1. through 5., the State rules at 38–2–11.5.b. through 11.5.f. provide the criteria to determine the site-specific bond amount. Therefore, the deletion of CSR 38–2–11.5.a.1 through 11.5.a.5 can be approved.

The deletion of the paragraph following CSR 38–2–11.5.a.5, concerning operations with inactive status, does not render the West Virginia program less effective, because the site-specific criteria for determining the appropriate bond at CSR 38–2–11.5.b through 11.5.f apply to all operations, including those on inactive status. All existing permits with inactive status have been reviewed by the State since these requirements took effect and their bonds have been adjusted to comply with the site-specific bonding requirements. Therefore, the deleted paragraph concerning inactive status that appeared immediately following CSR 38–2–11.5.a.5 is no longer necessary and the deletion can be approved.

24. 38–2–12.5.e. Acid Mine Drainage (AMD) Bond Forfeiture Inventory

This provision is amended by updating, from 1993 to 2002, the date that the AMD bond forfeiture inventory must be submitted to the West Virginia Legislature. In addition, the submittal of the inventory will be required annually. In its submittal of this amendment, WVDEP stated that the change will make its rules consistent with the W.Va. Code. We find that these amendments do not render the West Virginia program less effective than the Federal regulations and can be approved.

25. 38–2–14.12.a.1. Variance from Approximate Original Contour (AOC) Requirements

This provision concerns the procedures for obtaining an AOC variance for steep slope mining