

there is no subdivision 3 at subsection 22-3-23(c). We find, therefore, that this amendment does not render the provision less stringent than SMCRA nor less effective than the Federal regulations and can be approved.

4. As described in Committee Substitute for House Bill 2881, W. Va. Code 22B-1-7, concerning appeals to boards, is amended by changing the term "director" to "secretary" in several locations. We find that these amendments accurately reflect the current organization of the WVDEP and do not render the West Virginia program less stringent than SMCRA nor less effective than the Federal regulations and can be approved.

5. As described in House Bill 2882, W. Va. Code 22B-1-7(d), concerning appeals to boards, is amended by adding a proviso that unjust hardship shall not be grounds for granting a stay or suspension of an order, permit or official action for an order issued pursuant to W. Va. Code 22-3. This amendment is intended to satisfy the required program amendment codified at 30 CFR 948.16(nnn), which provides that West Virginia must revise Section 22B-1-7(d) to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the West Virginia Code. As discussed in the **Federal Register** on March 4, 2003, we reinstated this required amendment in order to comply with U.S. District Court Judge Haden's ruling of January 9, 2003 (68 FR 10178).

We find that as amended, section 22B-1-7(d) satisfies the required program amendment codified at 30 CFR 948.16(nnn) that unjust hardship shall not be grounds for granting a stay or suspension of an order, permit or official action for an order issued pursuant to W. Va. Code 22-3 and can be approved. Therefore, the required amendment at 30 CFR 948.16(nnn) can be removed.

6. As described in House Bill 2882, W. Va. Code 22B-1-7(h), concerning appeals to boards, is amended by deleting the reference to article "three" in regard to appeals to the environmental quality board. This amendment is intended to satisfy the required program amendment codified at 30 CFR 948.16(ooo), which provides that West Virginia must revise Section 22B-1-7(h) by removing reference to Article 3, Chapter 22, of the West Virginia Code. As discussed in the **Federal Register** on March 4, 2003, we reinstated this required amendment in order to comply with U.S. District Court Judge Haden's ruling of January 9, 2003 (68 FR 10178).

We find that the deletion of the word "three" satisfies the required program amendment codified at 30 CFR 948.16(ooo) and can be approved.

Therefore, the required amendment at 30 CFR 948.16(ooo) can be removed.

The following regulatory revisions are described in Committee Substitute for House Bill 2603.

7. CSR 38-2 is amended by updating the name of the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) (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. We find that these changes accurately reflect the current name of the NRCS and can be approved.

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. There is no direct Federal counterpart to this provision. We find, however, that this new provision is consistent with the Federal permit application requirement at 30 CFR 780.35 concerning the disposal of excess spoil and can be approved.

9. CSR 38-2-3.22.f.5.A, A.1 and A.2, concerning hydrologic information required in a permit application, is amended. This language is new and requires that the hydrologic reclamation plan contain a description of the measures that will 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. We find that this new language is consistent with the Federal permitting requirements at 30 CFR 780.21(h), 784.14(g) concerning the hydrologic reclamation plan, and 30 CFR 784.20(b)(8), pertaining to subsidence control plans, and can be approved.

10. 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 of the fill and shall include a schedule indicating timing and sequence of construction over the life of the fill.

There is no direct Federal counterpart to the proposed language. We find that the proposed language is not inconsistent with the Federal design provisions concerning sediment control structures at 30 CFR 780.25(b) and 784.16(b), and can be approved.

11. 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. There is no direct Federal counterpart to this proposed language. We find, however, that the proposed language is not inconsistent with the Federal requirements at 30 CFR 816/817.47 concerning discharge structures and can be approved.

12. CSR 38-2-5.6, storm water runoff, is a new provision 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