

record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) [hour] storm event or greater must be reported to the Secretary within twenty-four (24) hours and shall include the results of a permit wide drainage system inspection.

5.6.c. Each application for a permit shall contain a sediment retention plan to minimize downstream sediment deposition within the watershed resulting from precipitation events. Sediment retention plans may include, but are not limited to decant ponds, secondary control structures, increased frequency for cleaning out sediment control structures, or other methods approved by the Secretary.

5.6.d. After the first day of January two thousand four, all active mining operations must be consistent with the requirements of this subdivision. The permittee must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval within the schedule described in 5.6.d.1. Full compliance [compliance] with the permit revision shall be accomplished within 180 days from the date of Secretary approval. Active mining operations for the purpose of this subsection exclude permits that have obtained at least a Phase I release and are vegetated. Provided, however, permits or portions of permits that meet at least Phase I standards and are vegetated will be considered on a case by case basis.

5.6.d.1. Schedule of Submittal

5.6.d.1.a. Within 180 days from the first day of January two thousand four all active mining operations with permitted acreage greater than 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.b. Within 360 days from the first day of January two thousand four all active mining operations with permitted acreage between 200 and 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.c. Within 540 days from the first day of January two thousand four all active mining operations with permitted acreage between 100 and less than 200 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.d. Within 720 days from the first day of January two thousand four all active mining operations with

permitted acreage between 50 and less than 100 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.e. Within 900 days from the first day of January two thousand four all active mining operations with permitted acreage less than 50 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval. Provided, however, an exemption may be considered on a case by case basis. Furthermore [Furthermore], haulroads, loadouts, and ventilation facilities are excluded from this requirement.

There is no direct Federal counterpart to these provisions concerning storm water runoff. However, we find that these provisions are not inconsistent with the Federal requirements at 30 CFR 816/817.41 through 816/817.47, which require that all surface mining and reclamation activities be conducted to prevent material damage to the hydrologic balance outside the permit area, and can be approved. We note that at subsection CSR 38–2–5.6.b, the word “hour” is missing in the phrase “one (1) year, twenty-four (24) storm event.” The phrase should read, “one (1) year, twenty-four (24) hour storm event.” We understand this to be an inadvertent omission that will be corrected at a future date.

13. CSR 38–2–8.2.e, concerning fish and wildlife considerations, is amended by adding language to provide that in planning and constructing a windrow, the windrow shall not be placed in such manner or location to block natural drainways. We approved CSR 38–2–8.2.e on February 9, 1999 (64 FR 6201, 6209–6210). The proposed amendment to this provision is intended to make it clear that, so as not to impound water, timber used to create a windrow must not be placed in a manner or location that would block natural drainways. There is no direct Federal counterpart to this proposed language. However, we find that the proposed language does not render this provision inconsistent with SMCRA at section 515(d)(1) or less effective than the Federal regulations at 30 CFR 816/817.107(b) and can be approved. We note that this amended provision contains an inadvertent grammatical error. The amended sentence provides as follows: “In planning and constructing the windrow, care shall be taken not to impound water or and shall not be placed in such manner or location to block natural drainways.” We understand the amended sentence to mean that in

planning and constructing a windrow, care shall be taken so that the windrow not impound water or be placed in such manner or location to block natural drainways. Our approval of this provision is based upon our understanding that the inadvertent grammatical error will be corrected at a future date.

14. 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 revegetation plans for those areas to be reforested must include a map, a planting schedule and stocking rates. The intent of this provision is to encourage tree planting and reforestation where traditionally grasslands might be the revegetation of choice. There is no direct Federal counterpart to this proposed language. However, we find that the proposed language is not inconsistent with the Federal requirements concerning revegetation at 30 CFR 816/817.111(a) and can be approved.

15. 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 technical handbook. This deletion does not render the provision less effective than the Federal revegetation requirements at 30 CFR 816/817.116(a), because the State’s statistically valid sampling techniques for measuring ground cover and productivity are no longer contained in the Handbook. The WVDEP submitted a policy entitled “Productivity and Ground Cover Success Standards” that we approved in the **Federal Register** on May 1, 2002 (67 FR 21904, 21906–21907). The State’s statistically valid sampling techniques for measuring ground cover and productivity are set forth in the May 1, 2002, policy. Therefore, we find that the deletion of the words “from the Handbook” does not render the West Virginia program less effective than the Federal requirements and can be approved.

16. 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 technical handbook. The deletion of the phrase “in the Handbook” and its replacement by the phrase “by the Secretary” does