

to the Secretary in writing. The Secretary must conduct the inspection of the violation within the first 15 days after the notice or order was served. We find that, as amended, the State's civil penalty assessment procedures are the same as or similar to those contained in section 518 of SMCRA, are consistent with the Federal procedures concerning civil penalty assessment at 30 CFR 845.17, and can be approved.

26. 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." The two sentences that were deleted from this provision pertain to procedures for an informal conference, and were relocated to CSR 38-2-20.6.e concerning informal conference. We find that the amendments to CSR 38-2-20.6.c do not render the provision inconsistent with the Federal provisions concerning procedures for assessment of civil penalties at 30 CFR 845.17(b) and (c), and 845.18(c) and can be approved.

27. 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.

We find that the new language is similar to and therefore consistent with the Federal provision at 30 CFR 845.18(a) concerning procedures for assessment conference even though it provides a shorter period in which to request an informal conference. We also find that requiring the operator to forward the amount of the proposed penalty assessment to the Secretary of the WVDEP prior to an assessment conference is not inconsistent with the Federal provision at 30 CFR 845.19. The Federal rule at 30 CFR 845.19 concerns

request for a hearing, and provides that the person charged with the violation may contest the proposed penalty reassessment by submitting a petition and an amount equal to the proposed penalty for placement in an escrow account. Therefore, we find that the proposed language can be approved.

28. 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. This language was relocated from the approved program at CSR 38-2-20.6.c, and appropriately placed in this subsection concerning informal conference. We find that this amendment is consistent with the Federal provisions concerning procedures for assessment conference at 30 CFR 845.18(c) and can be approved.

29. 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. We find that this provision is substantively identical to the Federal regulations at 30 CFR 845.18(b)(4) concerning procedures for assessment conference and can be approved.

30. 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 amended provision 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. We find that this provision as amended is not inconsistent with the Federal provision at 30 CFR 845.19(b), which provides that funds placed in escrow shall be held in escrow pending completion of the administrative and judicial review process. Therefore, the amendments to CSR 38-2-20.6.j can be approved.

31. CSR 38-2-22.4.g.3.A concerns the design of Class C-type coal refuse impoundments without discharge structures that must be capable of storing a minimum of two six hour duration probable maximum storms. This provision 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 also states that 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 two PMP (Probable Maximum Precipitation) volume requirement, the dewatering system shall be installed when the containment volume is reduced to two PMPs.

The proposed language that requires a system to be designed to dewater the impoundment of the probable maximum storm in 10 days by pumping or by other means is consistent with the State's performance standard for coal refuse impoundments provision at CSR 38-2-22.5.j.5, which provides that impounding structures constructed of or impounding coal mine refuse shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period. The substantively identical Federal counterpart to CSR 38-2-22.5.j.5 is contained in 30 CFR 816/817.84(e). We find that the proposed design standard is no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(c)(2)(i) and 816/817.84(e) and can be approved.

The proposed new language also provides that 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. We are currently reviewing the State's Coal Related Dam Safety Rule at CSR 38-4 under a separate program amendment submitted by the State. However, since CSR 38-4-25.14 is relevant to the proposed amendment at CSR 38-2-22.4.g.3.A, we will address the State's Coal Related Dam Safety Rule at CSR 38-4-25.14 here.

Proposed CSR 38-4-25.14 provides as follows:

25.14. 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 [Assessment of Hazards and Consequences of Failure; see CSR 38-4-3.4.c]. The mechanical storm dewatering system shall be installed as designed and maintained properly with the system being tested monthly.

Proposed CSR 38-4-25.14 provides, in effect, a counterpart to the Federal regulations at 30 CFR 816/817.84(f),