

concerning the performance standard for impounding structures constructed of or impounding coal mine waste. The regulation at 30 CFR 816/817.84(f) provides that for an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event. We find that the proposed language at CSR 38–2–22.4.g.3.A, which requires that the Coal Related Dam Safety Rule at CSR 38–4–25.14 be met, together with the proposed regulation at CSR 38–4–25.14 are no less effective than the counterpart Federal regulations at 30 CFR 816/817.84(f) and can be approved.

The proposed new language also requires that for existing structures exceeding the minimum 2 PMP volume requirement, the “dewatering system” shall be installed when the containment volume is reduced to 2 PMPs. While the language does not specifically state that the “dewatering system” referred to is the same system as described at CSR 38–2–22.4.g.3.A, we interpret this provision to mean the same. That is, the system shall be designed to dewater the impoundment of the probable maximum storm in 10 days by pumping or other means, and the requirements of the Coal Related Dam Safety Rule at CSR 38–4–25.14, concerning removal of storm water from impoundments shall also be met. There is no Federal counterpart to this provision. We find, however, that the provision is not unreasonable, and 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.

32. CSR 38–2–22.4.i.6 is new and concerns the use of corrugated metal pipes in spillways. This provision provides that 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. We find that the provision is consistent with the Federal regulation at 30 CFR 816/817.84(c) which provides that spillways and outlet works of coal mine waste impounding structures shall be designed to provide adequate protection against erosion and corrosion, and that inlets shall be

protected against blockage. Therefore, we are approving the provision.

33. CSR 38–2–24.2.a, concerning the revegetation of remining operations, is amended by deleting the words “in the Handbook” at the end of the last sentence, and replacing those words with the words “by the Secretary.” The new revision provides that the determination of premining ground cover success and productivity shall be made using sampling techniques described by the Secretary. The WVDEP submitted a policy identifying statistically valid sampling techniques for measuring ground cover and productivity success that we approved on May 1, 2002 (67 FR 21904, 21906–21907). Therefore, we find that the deletion of the words “from the Handbook” does not render the West Virginia program less effective than the Federal regulations and can be approved.

34. CSR 38–2–24.3 concerns water quality exemptions for coal remining operations. This provision is amended by adding the following language at the end of the last sentence: “or a coal remining operation as defined in 40 CFR part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR part 434 as amended.” The amended provision provides that a coal remining operation which began after February 4, 1987, and on a site which was mined prior to August 3, 1977, may qualify for the water quality exemptions set forth in subsection (p), section 301 of the Federal Clean Water Act, as amended or a coal remining operation as defined in 40 CFR part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR part 434 as amended.

The existing language of this provision incorporates the added flexibility provided by the 1987 revision to the Clean Water Act that added section 301(p) (33 U.S.C. 1311(p)), often called the Rahall Amendment, that provides incentives for remining abandoned mine lands that predate the passage of SMCRA. The State’s proposed language is intended to incorporate the added flexibility provided by amendments to the Federal regulations at 40 CFR 434.70–434.75, which added effluent limitations and performance standards to a new Coal Remining Subcategory (Subpart G) under the existing regulations for the Coal Mining Point Source Category (January 23, 2002; 67 FR 3370). New Subpart G applies to coal remining operations, which are defined at 40 CFR 434.70(a) as coal mining operations at sites on which coal mining was previously conducted and where the

sites have been abandoned or the performance bonds have been forfeited. Since the additional language incorporates water quality exemptions authorized under the Clean Water Act, we find that the addition of the proposed language does not render the West Virginia program less stringent than SMCRA nor less effective than the Federal regulations and can be approved.

35. CSR 38–2–24.4 concerns bond release requirements for remining operations. This provision is amended by adding the following language at the end of the first sentence: “and the terms and conditions set forth in the NPDES [National Pollutant Discharge Elimination System] Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR part 434 as amended.” The new revision provides that bond release for remining operations shall be in accordance with all of the requirements set forth in subsection 12.2 of this rule and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR part 434 as amended. The proposed new language is intended to establish effluent limitations guidelines and new source performance standards for coal remining operations that are authorized under section 301(p) of the Clean Water Act, and at subpart G of the Federal regulations at 40 CFR part 434 (see Finding 34 above for more information). For the same reasons as those set forth in Finding 34, above, we find that the addition of the proposed language does not render the West Virginia program less stringent than SMCRA nor less effective than the Federal regulations and can be approved.

IV. Summary and Disposition of Comments

Public Comments

No public comments were received in response to our requests for comments from the public on the proposed amendments.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on April 2 and 4, 2003, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Number WV–1356 and 1357). On June 4, 2003, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA),