

responded (Administrative Record Number WV-1362) and stated that it has no comments on the changes in House Bills 2881 and 2882. MSHA stated that House Bill 2603 lacks the word "hour" on page 10, line one, at CSR 38-2-5.6.b, concerning storm water runoff. MSHA stated that in referring to the storm event, the statement "one (1) year, twenty-four (24) storm event" should read "one (1) year, twenty-four hour storm event". We acknowledged that the word "hour" is missing in Finding 12, above, and approved the provision with the understanding that the inadvertent omission would be corrected at a future date. MSHA had the following comments concerning the amendments to the regulations at CSR 38-2.

Section 3.7.d, concerning disposal of excess spoil. MSHA stated that is has no counterparts to these regulations that require a survey of the watershed to identify all man-made structures and residents and to determine the potential storm runoff impacts, and that require that the accuracy of the survey be verified by field work. As noted in Finding 8, above, we determined that there are no Federal counterparts to the provision, but that it is consistent with the Federal permit application requirement at 30 CFR 780.35 concerning the disposal of excess spoil and can be approved.

MSHA identified the proposed amendments at CSR 38-2-5.4.b.4, 5.6, 22.4.g.3.a, and 22.4.i.g [il], but did not provide any comments on those changes.

MSHA also provided comments on the changes to CSR 38-4, Coal Related Dam Safety Rule. As we noted above in Section III, in order to expedite our review of the State's proposed provisions that concern the recommendations of West Virginia's 2002 Flood Study, we separated all except one of the amendments relating to CSR 38-4, Coal Related Dam Safety Rule from this amendment. We will address the proposed amendments to CSR 38-4 and MSHA's comments relating to the proposed amendments to CSR 38-4, in a separate **Federal Register** notice at a later date.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On April 1, 2003, we asked for concurrence and comments on the amendment

(Administrative Record Number WV-1355).

The EPA responded by letter dated June 13, 2003, (Administrative Record Number WV-1363).

The EPA stated that it reviewed the proposed revisions and has concerns about the requirement of erosion protection zones (EPZs) associated with single-lift valley fills at CSR 38-2-14.14.g.1 (Durable Rock Fills).

EPZ Purpose—The EPA stated that it is EPA's understanding that an EPZ is a buffer zone between the toe of a single lift valley fill and its downstream sedimentation pond. It consists of a wide and low fill, revegetated to dissipate runoff energy from the valley fill face and prevent pond overloading during severe storm periods. The EPA stated that a single lift fill is particularly subject to erosion, since it is constructed in a downstream direction toward the pond with no reclamation or revegetation of the fill face until completion of mining.

EPA's Concern—The EPA stated that it is concerned that EPZs may result in permanent stream fills after completion of mining. According to CSR 38-2-14.14.g.2.A.1, the EPA stated, a 250-foot long EPZ would be required for a 500-foot high valley fill, which, EPA stated, is not unusual in southern West Virginia. Although Section 14.14.g.2.A.6 requires EPZ removal, regrading, and revegetating after mining, EPA stated, it does not appear to include the removal of the stream fill associated with the EPZ or reconstruction of the stream channel. An alternative valley fill design, which appears more environmentally acceptable, EPA stated, is also indicated in Section 14.14.g.1 and further described in Section 14.14.g.3. The EPA stated that this involves starting valley fill construction from the toe and proceeding upstream in multiple lifts (layers) of 100 feet or less in thickness. The EPA stated that the face of each lift would be reclaimed and revegetated before starting the next lift. The toe of the first lift would be at the sedimentation pond, the EPA stated, and an EPZ would not be necessary due to better erosion control features.

Conditional Concurrence—The EPA stated that it concurs with the proposed revisions under the condition that a requirement be included to remove stream fills associated with EPZs after mining and reconstruct the stream channels. The EPA stated that it should also be noted that stream filling during EPZ construction requires authorization under Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers. Considering the high erosion potential of single-lift

valley fills, the EPA stated, they (EPA) recommend that the single lift method be replaced by the more environmentally favorable approach of starting at the toe and proceeding upwards in multiple lifts. The EPA stated that it will likely make this recommendation for any proposed single lift fill coming before it for Section 404 review.

In response to EPA's conditional concurrence, and as we noted above in Finding 19, at CSR 38-2-14.14.g.2.A.6, we are not approving the words "[u]nless otherwise approved in the reclamation plan" because leaving an EPZ in place would be inconsistent with EPA's conditional concurrence to remove stream fills associated with EPZs and to reconstruct the stream channels after mining. In addition, we are approving CSR 38-2-14.14.g.2.A.6 only to the extent that following mining, all stream fills associated with EPZs will be removed and the stream channels shall be reconstructed.

The EPA also provided the following comments in support of specific amendments:

1. CSR 38-2-5.6.a.3 (Storm Water Runoff)—The EPA stated that this section requires that mining cause no net increase in peak runoff as compared to pre-mining conditions. The EPA stated that this is an important requirement for preventing mining operations from causing or increasing local flooding conditions. We concur with EPA's comment.

2. CSR 38-2-9.1.a (Revegetation)—The EPA stated that this section requires maximization of reforestation opportunities during mining reclamation. The EPA stated that it is a very beneficial approach to return land to its original forested state, unless there are other specific post-mining land uses. We concur with EPA's comment.

3. CSR 38-2-24.3 and 24.4 (Remining)—The EPA stated that these sections reference EPA's remining effluent guideline regulations promulgated in 2002 and listed in 40 CFR part 434, as amended. The EPA stated that they implement the Clean Water Act statute regarding remining, section 301(p), passed in 1987. The EPA stated that it considers remining to be an important tool for improving water quality and reclaiming scarred land associated with abandoned mines. The EPA stated that it supports providing of incentives to companies for remining salvageable coal from abandoned mines while making these environmental improvements with no cost to the public. The EPA stated that it is planning on holding workshops on implementation of the 2002 remining