

\* \* \* \* \*

Issued in Washington, DC, this 21st day of November, 2003.

**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

[FR Doc. 03-29641 Filed 11-28-03; 8:45 am]

BILLING CODE 7708-01-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 948

[WV-091-FOR]

#### West Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are announcing our approval of an amendment to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment we are approving consists of changes to the West Virginia Surface Mining Reclamation Rules as contained in House Bill 2663. The amendment is intended to improve the operational efficiency of the West Virginia program.

**EFFECTIVE DATE:** December 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347-7158. Internet: [chfo@osmre.gov](mailto:chfo@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

#### I. Background on the West Virginia Program

Section 503(a) of SMCRA permits a State to assume primacy for the regulation of surface mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and

rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

#### II. Submission of the Amendment

By letter dated May 2, 2001 (Administrative Record Number WV-1209), the West Virginia Department of Environmental Protection (WVDEP) submitted a proposed amendment to the West Virginia program. The program amendment consists of changes to the West Virginia Surface Mining Reclamation Rules at Code of State Regulations (CSR) 38-2, as amended by House Bill 2663.

We announced receipt of the proposed amendment in the May 24, 2001, **Federal Register** (66 FR 28682). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment (Administrative Record Number WV-1213). The public comment period closed on June 25, 2001. At the request of two commenters, we extended the comment period through July 13, 2003 (Administrative Record Numbers WV-1222 and WV-1223). We received comments from four environmental organizations and two Federal agencies.

We did not request comments on the proposed changes to CSR 38-2-3.14.b.12, concerning the partial removal of coal processing refuse piles, because that activity pertains to the removal of coal refuse that does not meet the definition of coal. In 1990, we stated that "the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of 'coal' set forth in 30 CFR 700.5; *i.e.*, ASTM Standard D 388-77, is not subject to regulation [under SMCRA]." 55 FR 21314; May 23, 1990. Therefore, it is not subject to regulation under SMCRA, and will not be considered here. We note that the removal of abandoned coal refuse piles was the subject of a later amendment that was addressed in a final rule notice published in the May 1, 2002, **Federal**

**Register** (67 FR 21920) (Administrative Record Number WV-1300).

In the proposed rule notice published on May 24, 2001, we incorrectly stated that the definition of "cumulative impact area" at CSR 38-2-2.39 is new and subject to public comment. The definition of "cumulative impact area" is not new, and is already part of the approved West Virginia program.

On July 1, 2003, WVDEP sent us a letter containing clarification concerning the proposed deletion of the definition of "cumulative impact," the addition of a definition of "material damage to the hydrologic balance outside the permit areas," and the addition of a provision qualifying certain coal removal during reclamation as government-financed construction that is exempt from a permit (Administrative Record Number WV-1365). The State's July 1, 2003, letter was in response to questions that we posed in a list dated February 26, 2003 (Administrative Record Number WV-1365). We announced receipt of the State's clarification letter in the **Federal Register** on July 31, 2003 (68 FR 44910). In the same document, we reopened the comment period to provide the public an opportunity to review and comment on the State's letter and whether the amendment, as further clarified in the State's letter dated July 1, 2003, satisfies the applicable program approval criteria of 30 CFR 732.15 (Administrative Record Number WV-1369). The public comment period closed on August 15, 2003. At the request of a Federal agency, we extended the public comment period through August 29, 2003 (Administrative Record Number WV-1371). We received comments from three environmental organizations and two Federal agencies.

Several of the proposed changes to the West Virginia regulations that were submitted as part of this amendment were intended to address required program amendments codified in the Federal regulations at 30 CFR 948.16(xx), (qqq), (zzz), (fff), (ggg), (hhh), (jjj), (nnn) and (ppp). We expedited our review of the specific amendments relating to those required amendments and published our decisions on them in the **Federal Register** on May 1, 2002 (67 FR 21904). Specifically, our findings on the following provisions that were submitted with this amendment and were addressed in our May 1, 2002, decision include: CSR 38-2-14.8.a.6 (948.16(xx)); CSR 38-2-12.2.e (948.16(qqq)); CSR 38-2-3.12.a.1 (948.16(zzz)); CSR 38-2-16.2.c.4 (948.16(fff)); CSR 38-2-16.2.c.4 (948.16(ggg)); CSR 38-2-16.2.c.4