

2. 22-3-22a(e) Blasting restrictions. This provision concerns blasting within 1,000 feet of a protected structure. This subsection was amended by adding the words "identified," and "notification area," which are intended to clarify the intent of the last sentence of this provision. These changes were made in response to our recommendations when we initially approved these blasting provisions on November 12, 1999 (64 FR 61507, 61511). As amended, the sentence provides that in the development of a site-specific blasting plan, consideration shall be given, but not limited to "\* \* \* the concerns of the owner or occupant living in the protected structures identified in the blasting schedule notification area." We find that the amendment does not render the provision inconsistent with SMCRA section 515(b)(15)(C), which concerns the prevention of injury to persons and damage to property, and can be approved. We note, however, that in our November 12, 1999, approval of this provision (64 FR at 61511) we approved W. Va. Code 22-3-22a(e) only to the extent that all blast designs, site specific and generic, as explained by WVDEP at that time, comply with the blast design requirements at CSR 38-2-6.5.g.3. These provisions are now located at CSR 199-1-3.6.f.3. Therefore, W. Va. Code 22-3-22a(e) remains approved with the understanding that all blast designs, site specific and generic, comply with the blast design requirements at CSR 199-1-3.6.f.3.

3. 22-3-22a(f) Waiver of the blasting prohibitions. This subsection was amended by deleting the words "or the site specific restriction within one thousand feet in writing" in two locations. The effect of this deletion means that a waiver of the site-specific blast design cannot be obtained within "one thousand feet" of a protected structure. Subsection 22-3-22a(e) provides that blasting within 1,000 feet of a protected structure shall have a site-specific blast design approved by the Office of Explosives and Blasting. Deletion of the words "or the site specific restriction within one thousand feet in writing" from the waiver provisions of subsection 22-3-22a(f) means that although an owner or occupant may waive the blasting prohibition within 300 feet of a protected structure, the permittee must still provide a site-specific blast design to the Office for all blasting within 1,000 feet of a protected structure. We find that the amendments to this provision do not render the West Virginia program less effective than the Federal

regulations at 30 CFR 816/817.61(d) and can be approved.

4. 22-3-30a(b) Blasting requirements. This subsection requires penalties to be imposed for each permit area or contiguous permit areas where blasting was not in compliance with the regulations governing blasting parameters and resulted in property damage to a protected structure. The subsection was amended by adding language to the first sentence that establishes the limits to which the penalties at subsection 22-3-30a(b) will apply. The words "at a surface coal mine operation as defined by the provisions of subdivision (2), subsection (a), section thirteen-a of this article" were added following the word "blast" and before the word "was." In effect, the penalties identified at subsection 22-3-30a(b) apply to surface coal mining operations, except those that are less than 200 acres in a single permitted area or less than 300 acres of contiguous or nearly contiguous area of two or more permitted areas. This revision is intended to ensure that coal operators with relatively small mining operations will not be subject to the penalties authorized by subsection 22-3-30a(b) (see Administrative Record Number WV-1376).

By its terms, 22-3-30a(b) pertains only to blasting violations that result in property damage to protected structures. These punitive penalties are in addition to the civil penalties that will be assessed for blasting violations resulting in property damage under CSR 199-1-8.6, 8.7, and 8.8 (Administrative Record Number WV-1376). These penalties will not apply to blasting violations caused by small surface mining operations as described in W. Va. Code 22-3-13a(1) or to coal extraction by underground coal mining methods. Thus, the supplemental penalties imposed by the State for these blasting violations are not inconsistent with the Federal penalty requirements at section 518 of SMCRA. Furthermore, all blasting violations, regardless of whether they cause damage to protected structures, including damage to water wells, will be subject to the civil penalty assessment requirements set forth in W. Va. Code 22-3-17 and CSR 199-1-8.6, 8.7, and 8.8 (see 64 FR at 61513-61514; November 12, 1999). Therefore, we find that the new language does not render the West Virginia program inconsistent with SMCRA at section 518, or the Federal regulations at 30 CFR part 845, and can be approved.

5. 22-3-30a(c) Prohibition against imposing penalties for violations that are merely administrative in nature. This provision was amended by adding

language to clarify what penalties may not be imposed on an operator for any violation identified in 22-3-30a(b) that is merely administrative in nature. As amended, this provision provides as follows:

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the division [Department] of environmental protection may not impose penalties, as provided for in subsection (b) of this section, on an operator for the violation of any rule identified in subsection (b) of this section that is merely administrative in nature.

We note that W. Va. Code 22-3-30a concerns liability and requires the imposition of punitive penalties in the event of property damage. As discussed above, all blasting related violations will be assessed civil penalties in accordance with W. Va. Code 22-3-17 and CSR 199-1-8.6, 8.7, and 8.8. This would also include blasting violations resulting in property damage that are administrative in nature. Therefore, we find that this provision is not inconsistent with SMCRA section 518(a) concerning penalties, and can be approved.

6. 22-3-30a(e) Blasting within 300 feet of a protected structure. This provision has been amended by adding language concerning site-specific blast designs. As amended, this subsection provides that where an inspection establishes that production blasting is done within 300 feet of a protected structure, without an approved site-specific blast design or not in accordance with an approved site-specific blast design for production blasting within 1,000 feet of a protected structure or within 100 feet of a cemetery, the monetary penalties and revocation, as set out in W. Va. Code 22-3-30a(b), apply. This means that production blasting that is done within 300 feet of a protected structure, even if it was done in accordance with a waiver or a site-specific blast design, and causes property damage will be assessed a supplemental penalty in accordance with W. Va. Code 22-3-30a(b). In addition, all blasting related violations that cause or do not cause property damage to protected structures will be subject to the civil penalty requirements of W. Va. Code 22-3-17 and CSR 199-1-8.6, 8.7, and 8.8. Therefore, we find that subsection 22-3-30a(e), as amended, is no less stringent than SMCRA section 518 and not inconsistent with 30 CFR part 845, and can be approved.

7. 22-3-30a(f) Penalties assessed and collected. This provision is amended by adding a citation to clarify that the penalties and liabilities that must be assessed are those authorized by subsection 22-3-30a(b). As