

of \$13.8 million (Administrative Record No. 952). This estimate did not include the cost of water treatment on bond forfeiture sites.

In addition, on December 31, 1993, the WVDEP submitted an "Acid Mine Drainage Bond Forfeiture Report" to the West Virginia legislature, as required by CSR § 38-2-12.5(e) (Administrative Record No. WV-952). The report identified acidic discharges from 89 bond forfeiture sites, which produce approximately 10 percent of the acid mine drainage in the State. Under the best-case scenario, the WVDEP estimated that treatment to neutralize only the discharges from bond forfeiture sites that are affecting receiving streams would require approximately \$2 million annually. Treatment of all discharges from all sites to meet Federal and State effluent limitations and water quality standards would cost approximately \$4.7 million annually.

Furthermore, State records show that, as of June 30, 1994, 243 bond forfeiture sites containing 10,996 acres have not been completely reclaimed. The State estimates that the total liabilities of the fund exceed total assets by \$22.2 million. This estimate does not include the cost of treating polluted water discharged from bond forfeiture sites. On July 20, 1994, the West Virginia Supreme Court ruled that the treatment of acid mine drainage is a component of reclamation and that the WVDEP has a mandatory nondiscretionary duty to utilize moneys from the special reclamation fund, up to 25 percent of the annual amount, to treat acid mine drainage at forfeiture sites when the proceeds from forfeited bonds are less than the actual cost of reclamation (*WVHC v. WVDEP*, No. 22233, July 20, 1994).

An alternative bonding system cannot be allowed to incur a deficit if it is to have available adequate revenues to complete the reclamation of all outstanding bond forfeiture sites. Alternative bonding systems must include reserves and revenue-raising mechanisms adequate to ensure completion of the reclamation plan and fulfillment of the permittee's obligations, including any water treatment needs.

Although the proposed site-specific bonding rates are significantly higher than the State's old flat rate bond of \$1,000 per acre and the State is proposing to increase its special reclamation tax from one cent to three cents per ton of mined coal to generate more revenue for the fund, State records indicate that the proposed bonding rates and the increase in revenues to the special reclamation fund are still

insufficient to ensure complete reclamation, including treatment of polluted water.

Therefore, the Director finds that West Virginia's alternative bonding system no longer meets the requirements of 30 CFR 800.11(e). Furthermore, it is not achieving the objectives and purposes of the conventional bonding program set forth in section 509 of SMCRA since the amount of bond and other guarantees under the West Virginia program are not sufficient to assure the completion of reclamation. Hence, the Director is requiring West Virginia to eliminate the deficit in the State's alternative bonding system and to ensure that sufficient funds will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites. The Director has taken and will take similar actions in all other states with deficits in alternative bonding systems.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for public meetings on the proposed amendment on three separate occasions. Public meetings were held on September 7, 1993, October 27, 1994, and May 30, 1995 (Administrative Record Nos. WV-906, WV-958, and WV-983). Comments on the special reclamation fund and bonding provisions were received from GAI Consultants, Inc. (GAI); West Virginia Coal Association (WVCA); West Virginia Mining and Reclamation Association (WVMRA); Arch of West Virginia (AWV); Buffalo Coal Company, Inc. (BCC); National Council of Coal Lessors, Inc. (NCCL); West Virginia Highlands Conservancy (WVHC); the West Virginia Chapters of Trout Unlimited (TU) and the Sierra Club (SC); National Citizens Coal Law Project (NCCLP), and the Downstream Alliance (DA).

Following is a summary of the substantive comments received on the proposed amendment. Comments identifying errors of a purely typographical or editorial nature and comments voicing general support or opposition to the proposed amendments but devoid of any specific statements are not discussed. The summarized comments and responses to the comments are organized by the section of the amended statutes and regulations to which they pertain. All citations to the State statutes and regulations in comments and responses have been adjusted to reflect the nomenclature of the August 18, 1994, version of the

statutes and the May 16, 1995, version of the regulations.

WVSCMRA § 22-3-11(c)(2): Alternative Bonding System

WVCA, WVMRA, and the WVHC commented on WVSCMRA § 22-3-11(c)(2) which provides that the Director of the WVDEP may approve an alternative bonding system under certain conditions. The State has not proposed any revisions to this section of the West Virginia statute. In acting on State program amendments, OSM only addresses those sections of a State's laws and regulations where revisions are proposed by a State. OSM will take the comments received into consideration when reviewing the State's statute and rules pursuant to 30 CFR 732.17.

WVSCMRA § 22-3-11(g): Special Reclamation Fund

1. *Comment:* WVHC did not generally support the revisions proposed for the special reclamation fund. WVHC stated the belief that "the state has a mandatory duty to treat water as a part of the approved reclamation plan at all forfeited sites, and that the alternative bonding system/special reclamation fund is to provide the State sufficient money to complete all reclamation, at all times, at any and all forfeited sites, including water treatment where necessary to meet effluent limitations and water quality standards." This belief was also expressed by the SC which added that the 25 percent limit applied to expenditures for water treatment explicitly weakens the Federal requirement for full and prompt reclamation.

WVHC commented that the provisions of section 509(c) of SMCRA, the provisions of 30 CFR 800.11(e) of the Federal regulations, and the West Virginia Supreme Court Decision in the Mandamus action (*WVHC v. WVDEP*, No. 22233, July 20, 1994) supported its belief [See Administrative Record No. WV-930 for a copy of the referenced decision]. WVHC pointed out that the actuarial study of 1993 was not an acceptable assessment of the adequacy of the special reclamation fund since it asserted the State was not liable for water treatment at bond forfeiture sites. WVHC further urged OSM to require the State resolve the issue of inadequate funds, assess additional monies for the special reclamation fund, and expend the monies to reclaim existing bond forfeiture sites.

In general, WVHC believed that the codification language used by OSM left several unanswered questions and that findings contained in the preamble would be forgotten.