subsection (g). This provision clarifies that the fund can only be used for specific purposes and cannot be used to finance other State programs. Furthermore, West Virginia proposes to revise § 22-3-11(g) by limiting the amount the Director of the WVDEP may expend on administrative expenses to an amount not to exceed 10 percent of the total annual assets in the special reclamation fund. Such administrative funds can only be used to implement and administer the provisions of articles 2, 3, and 4 of chapter 22 of the West Virginia Code and, as they apply to the surface mine board, articles 1 and 4 of chapter 22b of the West Virginia Code. This revision gives the Director of WVDEP discretionary power to allocate 10 percent of the total annual assets in the special reclamation fund to administrative costs incurred under the abandoned mine land program, the mining and reclamation program, the minerals other than coal program, and the Surface Mine Board.

OSM expressed concern about the State using money from the fund for any expense not related to bond forfeiture reclamation since the fund's liabilities now exceed its assets. In response, the State indicated that the 10 percent amount generally is expended exclusively for administration of the bond forfeiture/special reclamation program (Administrative Record No.

While there is no direct Federal counterpart authorizing expenditures of bond forfeiture funds for the purpose of administrative expenses, the Director finds that this provision is not inconsistent with the objectives and purposes of section 509 of SMCRA. The Director is approving this revision to $\S 22-3-11(g)$ to the extent that the special reclamation fund can withstand administrative cost withdrawals without hampering the State's ability to complete reclamation of bond forfeiture a sites.

(4) Special Reclamation Tax

(a) West Virginia proposes to revise $\S 22-3-11(g)$ to increase the fee paid into the special reclamation fund from one cent to three cents per ton of clean coal mined and to clarify how the fee is to be collected. Section 509(c) of SMCRA and 30 CFR 800.11(e) of the Federal regulations do not specify the types of revenue-raising mechanisms. The Director is therefore approving these revisions because, under SMCRA, States have discretion in how to collect revenue to support alternative bonding systems and because the proposed tax increase will improve the financial condition of the fund.

(b) West Virginia proposes to add a provision to $\S 22-3-11(g)$ to require that every person liable for payment of the special reclamation tax pay the amount due without notice or demand for payment. The Tax Commissioner must provide the Director of the WVDEP a quarterly listing of all persons known to be delinquent in payment of the special tax. The Director of the WVDEP may take such delinquencies into account in making determinations on the issuance, renewal, or revision of any permit. Although there are no direct Federal counterparts to these provisions, the Director finds that they are a reasonable means of enforcing fee payment requirements and are hereby approved.

(c) West Virginia also proposes to revise § 22–3–11(g) by adding a requirement that the special reclamation tax be collected from every person conducting coal surface mining operations whenever the liabilities of the State for bond forfeiture reclamation exceed the accrued amount in the special reclamation fund. In conjunction with this new provision, the State is proposing to remove the requirement for a one million dollar cash reserve.

Existing State law requires that the special reclamation tax be collected whenever the assets in the fund fall below one million dollars and to continue to be collected until assets. exceeded two million dollars. This provision under normal circumstances enables the fund to maintain a cash balance to reclaim sites as they were forfeited.

Section 509(c) of SMCRA requires that, under an alternative bonding system, the regulatory authority must have available sufficient money to complete the reclamation plan for any site that may be in default at any time. 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. Under a conventional bonding system, an operator must post a full-cost reclamation bond that is sufficient to cover the cost of reclamation during the life of the operation. Periodic adjustments in bond amounts are required to ensure that the bond is adequate to cover the cost of reclamation, including water treatment, at any time. Under an alternative bonding system, the sit-specific bond does not have to be sufficient to cover the cost of reclamation. However, 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 treatment needs.

Although the proposed site-specific bonding rates are significantly higher than the State's existing 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 are still insufficient to ensure complete reclamation, including water treatment, at all bond forfeiture sites.

Therefore, the Director is disapproving the proposal to the extent that it would allow the special reclamation fund to incur a deficit. He is requiring West Virginia to remove the provision that allows collection of the special reclamation tax only when the bond forfeiture liabilities of the State exceed the fund's assets.

(d) West Virginia proposed new provisions to require the Tax Commissioner to deposit the fees collected with the State Treasurer to the credit of the special reclamation fund. Monies in the fund must be placed in an interest-bearing account with interest being returned to the fund on an annual basis. This proposed revision will improve the financial condition of the fund and is hereby approved.

2. § 22–3–12: Site-Specific Bonding

West Virginia proposes to develop and implement a site specific bonding system. Under the proposed system, the amount of the penal bond can not be less that \$1,000 nor more than \$5,000 per acre, and the bond must reflect the relative cost of reclamation associated with the activities to be permitted. The types of mining, mining techniques, mining methods, equipment, support facilities, topography, geology, and effect on water quality are among the factors that must be considered in determining the amount of site-specific bond. In addition, type of application, environmental enhancement, mining experience of the applicant, and compliance history of the applicant are among the factors that the Director of WVDEP may consider in determining the amount of site-specific bond.

The State's development of sitespecific bonding requirements should provide greater assurance that reclamation will be completed by the permittee and will improve the financial stability of the special reclamation fund. The increase in bond should also provide a substantial economic incentive for the permittee to comply with all reclamation requirements to avoid the economic loss in case of bond