Nonetheless, there is nothing in the State's proposal that would conflict with any Federal requirement or result in less stringent bonding of disturbed areas. Therefore, the Director finds West Virginia's proposed regulation at CSR § 38–2–11.4(a)(2) is not inconsistent with SMCRA or the Federal regulations and is hereby approved.

c. The State proposes to revise subsection 11.4(a)(3), by adding a new provision that requires independent increments to be of sufficient size and configuration so as to provide for efficient and contemporaneous reclamation operations. Because this provision is substantively identical to the Federal regulation, the Director finds that West Virginia's proposed revision is no less effective than 30 CFR 800.11(b)(4) and is hereby approved.

d. The Director notes that West Virginia needs to amend its regulations at CSR § 38–2–11.4(a)(1) and 11.4(a)(4) to delete the word "performance" in order to remain consistent with its new penal bond requirements.

4. SCR § 38–2–11.5: Open-Acre Limit Bonding

West Virginia proposes to add new provisions in this subsection allowing for elective open-acre limit bonding for surface extraction operations only. These provisions would provide an alternative to bonding either the entire permit area or bonding the permit area in increments. Open-acre limit bonding is a mechanism whereby the operator bonds a designated portion of the total permit area. Only that portion of the permit area which is bonded may be disturbed. After surface extraction and reclamation has taken place on this "open-acre limit" portion of the permit, the operator is required to verify that that portion of the permit has been backfilled, graded and revegetated in accordance with the reclamation plan and the applicable statutory and regulatory provisions. At that point, the operator may apply the already established "open-acre limit" bond amount to another portion of the permit. The acreage of the next succeeding portion must not exceed the acreage of the previous portion. Mining and reclamation continue in this manner until the entire permit area has been

Subsection 11.5(a)(1) requires a permittee to post a general bond in the amount of \$750 per acre to ensure successful revegetation of the entire permitted area. Subsection 11.5(a)(2) requires the permittee to post an openacre limit bond in accordance with the site-specific bonding requirements of subsection 11.6, which require a bond of

not less than \$1,000 nor more than \$5,000 per acre based on specified criteria. The minimum amount of the open-acre limit bond will be \$10,000. This subsection also requires the permittee to post an ancillary facility bond for haulroads, sediment control systems and other permanent or semi-permanent control systems and other permanent or semi-permanent ancillary facilities at a rate of \$1,000 per acre for the total proposed disturbed acreage of such facilities.

The general and ancillary facility bonds are to remain in place until released in accordance with CSR § 38–2–12.2 of the State's regulations. The open-acre limit bond can be reapplied to an undisturbed portion of the permit area after the initial open-acre limit area has been backfilled, regraded, and vegetated in accordance with the approved reclamation plan and the provisions of CSR § 38–2–14.15 of the State's regulations.

Subsection 11.5(b) contains permit application requirements for open-acre limit bonding. The permit application must contain a separate bonding section which includes: (1) An overlay outline map which depicts the location and extent of the initial open-acre limit, remaining permit area for which no initial bond is to be posted, and ancillary facilities; (2) a description of the bonding instruments for the three types of bond; and (3) a narrative description for the timing and sequence of mining and reclamation operations.

Subsection 11.5(c) provides that when mining and reclamation of the initial or succeeding open-acre limit is nearing completion, the permittee must submit a request to advance the open-acre limit into the undisturbed portions of the permit area by an amount of acreage not to exceed the acreage reclaimed within the existing open-acre limit area. An overlay map depicting the reclaimed open-acre limit area and the undisturbed area to which the bond is being transferred and a copy of the bond release advertisement must accompany the request. Subsection 11.5(d) provides that approval for transfer of the openacre limit bond may not be granted until a review of the request and site is made and verified by the Director of WVDEP.

Subsection 11.5(e) provides that the permittee must apply for bond release in the same manner as described in section 23 of the Act and subsection 12.2 of these regulations when all mining and reclamation on the permit area are completed. As discussed in finding B.7., no portion of the open-acre bond can be released until all coal extraction operations are completed and the entire disturbed area is backfilled and

regraded. Therefore, the proposal will not allow for final release of any openacre limit bonded area without public notice and opportunity for comment.

While the Federal conventional bonding regulations do not contain a counterpart form of West Virginia's proposed open-acre-limit bonding, section 509(c) of SMCRA and 30 CFR 800.11(e) of the Federal regulations allow the States wide latitude in establishing alternative bonding systems. Nothing in the State's proposal is inconsistent with these requirements since the open-acre bond would replace only the site-specific component of the alternative bonding system.

The permittee would still have to pay the special reclamation fee and the alternative bonding system would still remain responsible for completion of reclamation in the event the permittee defaulted. The open-acre limit bonding rules at CSR § 38–2–11.5 are hereby approved.

5. CSR § 38–2–11.6: Site-Specific Bonding

West Virginia proposes adding CSR § 38–2–11.6 to implement the sitespecific bonding provisions of § 22-3-12 of the West Virginia Code. The proposed rules establish separate requirements for four major categories of mining permits: surface mines, underground mines, coal refuse disposal sites, and coal preparation plants. Under the proposed rules, the site-specific bonds cannot be less than \$1,000 nor more than \$5,000 per acre or fraction thereof. This subsection includes tables to be used to calculate the per-acre bond for each category of mining included in a permit.

Subsection 11.6(a) provides that the site-specific bond criteria shall not apply where active or inactive operations are in compliance with the provisions of subsection 14.15 and where coal extraction operations are nearly completed, or when the operations are eligible for or have received Phase I bond release. In its September 1, 1994, submittal, the State proposed to exempt from the sitespecific bonding criteria only those sites where coal extraction operations were "completed" and which met the other above-referenced criteria. However, this proposed subsection was revised in the May 16, 1995, submittal to exempt sites from the site-specific bonding requirements where coal extraction operations are nearly but not totally complete. Subsection 11.6(a)(1) provides that surface mine permits shall be reviewed at the time of renewal or midterm review and a determination made in accordance with specified