criteria as to whether the site-specific bond will apply. Subsections 11.6(a) (2), (3), and (4) provide that existing permits for underground mines, preparation plants, and coal refuse sites, respectively, shall be subject to the sitespecific bond criteria at the time of application for renewal or midterm review and shall not be renewed by the Director of WVDEP until the appropriate

amount of bond is posted. Subsection 11.6(b) explains the major criteria that will apply to the four categories of mining permits. The criteria consists of relative cost factors associated with reclamation of a forfeited site, the risk of bond forfeiture, the operator's history of performance, and environmental enhancement potential. Subsections 11.6 (c), (d), (e) and (f) specify the subcriteria to be considered for computing the bond for surface mines, underground mines, coal preparation plants, and coal refuse sites. In the May 16, 1995, submittal, the State proposed to limit the period of consideration of an applicant's violation history and acts of environmental enhancement to within five years of the date of surface mine application approval instead of ten years as first proposed. Also, coal loading facilities will not be subject to site-specific bonding criteria applicable to coal preparation plants. Subsection 11.6(g) provides for an informal conference if the applicant contests the per-acre amount of the bond. The final decision may be appealed by the operator in accordance with § 22-5-21 of the West Virginia Code.

Since participation in West Virginia's alternative bonding system is mandatory, the requirement of 30 CFR 800.14(b) that the amount of the bond be sufficient to assure the completion of the reclamation plan in event of forfeiture is not applicable to the State's site-specific bonds. The State's development of more detailed sitespecific bonding requirements should result in better reclamation of the mined lands by providing incentives to design and conduct mining operations in a more environmentally sound manner.

These bonding requirements should improve the financial condition of the special reclamation fund. To the extent that the new system results in an increase in bond amounts, it will provide greater incentive for the permittee to comply with all reclamation requirements to avoid the economic loss associated with bond forfeiture, in keeping with the requirements for alternative bonding systems at 30 CFR 800.11(e)(2). Therefore, the Director finds that the State's site-specific bonding provisions

are not inconsistent with the requirements of section 509(c) of SMCRA and 30 CFR 800.11(e) for alternative bonding systems. The sitespecific bonding rules at CSR § 38-2-11.6 are hereby approved.

However, the Director's approval is subject to the stipulation that nothing in these regulations or this approval may be construed as altering or authorizing a variance or deviation from the permitting requirements and performance standards of West Virginia's approved program.

For example, subsection 11.6(c)(4)(A)could be read to be inconsistent with the West Virginia program regulations at CSR § 38-2-14.15 for timely backfilling and grading because the conversion factor at subsection 11.6(c)(4)(A)(iii) applies in part if the reclamation plan contains unspecified "vague" time and distance criteria. Subsection 14.15(b) requires that the permit include specific time, distance, or acreage standards for each type of surface mining operation. There is no provision anywhere in section 14.15 for "vague" time and distance criteria. Hence, the reference to "vague criteria" in subsection 11.6 may not be interpreted as authorizing the approval of such criteria.

The Director notes that the text of subsection 11.6(c)(1)(B)(ii) refers to a factor of "0.5" while the referenced table identifies a factor of "0.6." Also, for consistency, subsection 11.6(c)(1)(B)(ii) and Table 1 probably should be revised to read "three to six fills"; otherwise a plan calling for two fills is covered by both subparts (i) and (ii). Similarly, subsection 11.6(c)(2)(B)(i) and (ii) both apply to mining plans where two seams of coal are to be mined. To lend consistency to its regulations, subpart (ii) and Table 1 should probably be revised to read "three or four seams of coal."

6. CSR § 38-2-11.7: Environmental Security Account

Proposed subsection 11.7 requires the WVDEP to study the feasibility of developing an environmental security account for water quality. The study is to include: (1) a screening process for determining which sites have the potential for producing acid mine drainage, (2) a process for predicting the rate and duration of acid mine drainage, (3) a method for estimating water treatment costs, (4) a system to ensure that sufficient monies will be placed in an escrow account to provide financial assurance that treatment will be accomplished and maintained, and (5) procedures to ensure the expenditure of funds from the escrow account in the event of default will provide water

treatment. Furthermore, subsection 11.7(f) provides that after the study is completed, the Director of WVDEP may propose regulations to implement the environmental security account for water quality, but the regulations will not become effective until approved by the legislature. Subsection 11.7(g) provides that the Director of WVDEP shall inform the legislature if statutory changes are necessary to implement an effective system for financial assurances. Subsection 11.7(h) provides that nothing in this subsection authorizes the issuance of a permit that will violate applicable effluent limitations or water quality standards without treatment.

Development of an environmental security account for water quality could enhance the financial status of the State's special reclamation fund. Therefore, the Director finds the provisions at CSR § 38-2-11.7, which provides for a feasibility study, are not inconsistent with 509(c) of SMCRA or 30 CFR 800.11(e) of the Federal regulations. The Director notes that pursuant to 30 CFR 732.17(g), any regulations proposed to implement the environmental security account as a bonding mechanism for water quality or to otherwise incorporate it into the coal regulatory program must also be approved by OSM.

7. CSR § 38-2-12.2: Requirement To Release Bonds

West Virginia proposes to revise subsection 12.2(c) to provide for the release of all or part of the bond for the permit area or increment thereof. The State also proposes to revise subsection 12.2(c)(2) to delete the provision relating to chemical treatment of water at Phase II bond release and to add a provision at subsection 12.2(c)(2)(B) to require that the terms and conditions of the NPDES permit be met. Subsection 12.2(c)(2)(E) now requires that the amount of the remaining bond must be sufficient to reestablish vegetation and maintain permanent drainage control structures. These revised provisions are substantively the same as the Federal counterpart provisions at 30 CFR 800.40(c)(2) and are hereby approved.

The State proposes to add new subsection 12.2(d) to prohibit the release of any portion of the bonds posted in accordance with subsection 11.5 (open-acre limit bonding) until all coal extraction operations are completed and the entire disturbed area has been completely backfilled and regraded. Because of the floating nature of this type of bond, this restriction is needed to provide a degree of protection consistent with other types of site-