subsection 12.4 into new paragraphs (c), (d), and (e).

(1) In the June 28, 1993, version of the proposed amendment, as revised by letter dated July 30, 1993 (Administrative Record Nos. WV-889 and WV-893), new subsection 12.4(c) [previously 12.4(d)(2)] required the Director of WVDEP to initiate operations to reclaim a bond forfeiture site within 180 days after the notice of forfeiture is served. It also required remediation of acid mine drainage, including chemical treatment where appropriate.

On April 1, 1994, OSM advised West Virginia that to be no less effective than 30 ČFR 800.50(b)(2), bond forfeiture sites must "be reclaimed in accordance with the approved reclamation plans or modifications thereof." (Administrative Record No. WV-916). The Federal regulations at 30 CFR 800.50(b)(2) and 800.11(e) require bond forfeiture sites to be reclaimed in accordance with the reclamation plans of the revoked or suspended permits, including any modifications approved by the regulatory authority.

In its submission of September 1, 1994, West Virginia revised its regulations at CSR § 38-2-12.4(c) to clarify that bond forfeiture sites will be reclaimed in accordance with approved reclamation plans or modifications thereof (Administrative Record No. WV-937). This proposal satisfies the requirements at 30 CFR 948.15(k)(8) and 948.16(ww) that reclamation on bond forfeiture sites be completed in accordance with the approved reclamation plan. Therefore, the Director is approving this proposed revision, and he is removing the required amendment at 30 CFR 948.16(ww).

(2) New subsection 12.4(d) retains the provision from existing subsection 12.4(d)(2) that requires the Director of WVDEP to make expenditures from the special reclamation fund to complete reclamation when the proceeds of bond forfeiture are less than the actual cost of reclamation. New subsection 12.4(d) also includes the new provision requiring the Director of WVDEP to take the most effective actions possible to remediate acid mine drainage, including chemical treatment where appropriate.

Since this revised provision still makes it mandatory that West Virginia use the special reclamation fund to complete reclamation at bond forfeiture sites, the Director finds that subsection 12.4(d), as revised, is consistent with the requirements of section 509(c) of SMCRA and 30 CFR 800.11(e) of the Federal regulations and is hereby approved.

(3) At subsection 12.4(e) [previously 12.4(d)(1)], the State proposes to provide that the operator, permittee, or other responsible party be liable for all costs in excess of the amount forfeited. The Director of WVDEP may commence civil, criminal, or other appropriate action to collect such costs.

The Federal regulations at 30 CFR 800.50(d)(1) require that the operator be liable for costs in excess of the amount forfeited. They allow the regulatory authority to recover from the operator all costs of reclamation in excess of the amount forfeited. Although West Virginia does not define "other responsible party," it is commonly understood that it would include any other person who may be responsible for the mining operation.

West Virginia's proposed requirement is neither specifically authorized nor prohibited by SMCRA. However, it is consistent with the principles and purposes of SMCRA to ensure the reclamation of surface areas disturbed by coal mining. See SMCRA section 102(e). Therefore, since the proposed provision does not conflict with any Federal requirements under SMCRA, the Director finds that the proposed revision does not render subsection 12.4(e) inconsistent with SMCRA or the Federal regulations, and he is approving

e. West Virginia deleted existing subsection 12.4(e) pertaining to the effective date of the provisions within subsection 12.4 relating to water quality. Because the date has long since passed, the Director finds this deletion will not render the West Virginia program less effective than the Federal regulations.

## 10. CSR § 38-2-12.5: Water Quality Enhancement

## a. Prioritization of Forfeited Sites

West Virginia proposes to add a new subsection 12.5 to implement that portion of § 22-3-11(g) of the West Virginia Code which authorizes WVDEP to prioritize bond forfeiture sites for reclamation purposes. Subsection 12.5(a) requires the Director of WVDEP to establish an inventory of all sites for which bonds have been forfeited. The inventory is to include data relating to the quality of water being discharged from the sites. Subsection 12.5(b) requires a priority listing of these sites based upon the severity of the discharges, the quality of the receiving stream, effects on downstream water users, and other factors determined to affect the priority ranking.

Subsection 12.5(c) provides that, until the legislature supplements or adjusts the special reclamation fund, the

Director of WVDEP can selectively choose sites from the inventory for water quality enhancement projects. Subsection 12.5(d) provides that, in selecting sites for water improvement projects, the Director must consider relative benefits and costs of the projects.

Subsection 12.5(e) required the Director of WVDEP to submit to the legislature, a detailed report and inventory of acid mine drainage from bond forfeiture sites. The report, which was submitted on December 31, 1993, includes cost estimates for long-term chemical treatment of drainage from each site and proposals for supplementing and adjusting the special reclamation fund to pay for this treatment (Administrative Record No. 952).

For the reasons set forth in finding A.1.b.(1), and subject to the same stipulations, subsection 12.5 is not inconsistent with the reclamation requirements of 30 CFR 800.50(b)(2) and 800.11(e), except as discussed in finding B.10.b. below. Subsections 12.5 (a), (b), (c) and (e) are hereby approved.

## b. Limitation on Water Treatment at **Bond Forfeiture Sites**

Subsection 12.5(d) also provides that expenditures from the special reclamation fund for water quality enhancement projects may not exceed 25 percent of the fund's gross annual revenue. For the reasons set forth in finding A.1.b.(2), the Director finds that this limitation is inconsistent with 30 CFR 800.11(e) and is hereby disapproved. Also, the Director is requiring that the State revise subsection 12.5(d) to remove the 25 percent limitation or to otherwise provide for the treatment of polluted water discharged from all existing and future bond forfeiture sites.

## C. The West Virginia Alternative Bonding System

On October 1, 1991 (Administrative Record No. WV-878), OSM notified West Virginia in accordance with 30 CFR 732.17 that its regulatory program no longer met all Federal requirements. Since 1989, OSM's annual reviews of West Virginia's alternative bonding system had found the system to be incapable of meeting the Federal requirements at 30 CFR 800.11(e) since its alternative bonding system liabilities exceeded assets. As of June 30, 1990, the special reclamation fund liabilities exceeded assets by \$6.2 million. Also, a 1993 actuarial study by the accounting firm of Deloitte and Touche estimated that, by 1997, the State's special reclamation fund would have a deficit