reclamation fund exceeded assets by \$22.2 million takes into account a cash balance in the fund.

WVSCMRA § 22–3–23(c)(3) Colombo Amendment

WVCA, WVMRA, and SC commented on WVSCMRA § 22-3-23(c)(3). 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 and the State met on August 16, 1995, to resolve differences concerning this provision and to address other matters. OSM is conducting a survey of potential Colombo sites to determine the scope and nature of the problem. The WVDEP has agreed to cooperate with OSM by providing information they may have and to not release additional sites under the Colombo provision. The disapproval of WVSCMRA § 22-3-23(c)(3) found at 30 CFR 948.12(e) and the program set aside at 30 CFR 948.13(c) remain in

CSR § 38–2–11.2(e) Bond Liability for Permits Transferred, Assigned, or Sold Under the Provisions of CSR § 38–2–3.25

Comment: AWV pointed out that the provision does not give the Director of WVDEP the authority to increase bond amounts to address deficiencies in permits which are transferred or assigned. AWV further argued that "this provision should not apply to permits which are assigned pursuant to 38 W.Va. C.S.R. § 3.25(c), since liability under the bond and permit under such an arrangement remains with the original permittee." AWV stated that "the suggestion that bonds, in themselves, can be transferred is misleading and inconsistent with other provisions in the regulations." AWV also suggested that the provision should be rewritten to clarify that permits instead of bonds are transferred and to allow the Director of WVDEP to require bond adjustment as an alternative to the proposed requirement for assumption of liability.

Response: The intent of this provision is to ensure that the person who is to receive the permit has adequate financial resources to manage long-term environmental liabilities associated with mining such as water treatment. It is within the State's authority to require such a demonstration prior to permit transfer. Although the Director agrees that the provision could be clarified, as discussed in finding B.1.b, the new provision at CSR § 38–2–11.2(e) is not inconsistent with the Federal bonding requirements at 30 CFR Part 800 or the

Federal permitting requirements at § 774.17(b)(3).

CSR § 38-2-11.6 Site-Specific Bonding

Comment: AWV expressed support for West Virginia's efforts to implement site-specific bonding in order to improve its regulatory program. However, AWV stated that "the regulation should more clearly identify how the bonding changes will be implemented and administered."

Subsection 11.6(a): AWV commented that the provisions of subsection 11.6 should only apply to permits issued after its effective date. AWV further commented that considering bond is limited to \$5,000 per acre, West Virginia should add language to subsection 11.6(a) to clarify the procedures for calculating bond when more than one permit includes the same area. The DA believed that the \$5,000 per acre limit on site-specific bonds contradicted SMCRA because such a bond is insufficient to enable the regulatory authority to complete reclamation, especially in the case of underground mines where there is liability for acid mine drainage and subsidence. The WVHC commented that site-specific bonds should be required where coal extraction is complete and for operations that are eligible for or have received Phase I bond release.

Subsection 11.6 (c), (d), (e), and (f): AWV stated that "a general concern with respect to all of the subsection 11.6 tables is that the factors 0.2, 0.6, and 1.0 produce too many extreme and inequitable results, thereby distorting the significance of some criteria." In support of its concern, AWV presented three examples and argued that: (1) factoring under subsection 11.6(c)(1)(B) for three excess spoil disposal fills is three times higher than a plan for two, while six fills is the same as three; (2) the provisions at subsection 11.6(c)(2)(C)(ii) and (iii) differentiate between conventional and highwall auger mining even though the cost per linear foot to reclaim the highwall would not differ and (3) the provisions at subsection 11.6(d)(1)(A) do not consider the vicinity of backfill material when factoring for shaft or slope entry backfills. AWV also noted a typographical error and some inconsistencies in the provisions of subsection 11.6(c).

Subsection 11.6(c)(5)(A): AWV commented that West Virginia should clarify the terms "active permit" and "last full calendar year" as it relates to this provision. AWV also commented that West Virginia should add a provision to this subsection specifying

that violations pending review or appeal would not be considered.

Subsection 11.6(v)(5)(B): AWV pointed out that the percentages used for contemporaneous reclamation were discretionary since they were not defined. AWV also commented that consideration of an operation's "contemporaneous reclamation" status should not be limited to the permit application review period.

Subsection 11.6(c)(6)(B): AWV commented that national and local reclamation awards should not be a consideration since they often depend on other factors not related to success of reclamation. AWV further suggested that WVDEP factor in the amount of disturbed land reclaimed in a 24-month period instead of awards.

Subsection 11.6(g): AWV suggested that West Virginia add language in subparagraph (2) to allow the Director of WVDEP to not hold an informal conference if he agreed that "the amount proposed by the applicant is appropriate."

Response: Under an alternative bonding system, a State has considerable latitude in setting sitespecific bond amounts and administering the program. The State may even choose to place a limit on the per-acre amount of the site-specific bond. The most important factor that has to be considered is whether the alternative bonding system has adequate revenue to cover the cost of reclamation of those sites that may be forfeited and that it provides substantial economic incentive for the operator to comply with all reclamation requirements. As discussed in finding B.5., the Director found the State's provisions for sitespecific bonding are not inconsistent with the requirements of section 509(c) of SMCRA and 30 CFR 800.11(e) of the Federal regulations.

CSR § 38–2–11.7 Environmental Security Account for Water Quality

1. Comment: WVCA commented that "OSM appears to mischaracterize the scope and purpose of this proposed rule, which allows WVDEP to create an Environmental Security Account. OSM states that this regulation does not provide any authority for WVDEP to issue permits for discharges that will violate effluent limitations or water quality standards 'without treatment.' See 58 Fed. Reg. at 42909. If by the phrase 'without treatment' OSM means to say that this proposed regulation prohibits WVDEP from issuing permits for operations which may generate acid mine drainage, it is simply wrong. Nothing in either § 38–2–11.7 or SMCRA contains any such prohibition.