

Compliance Bulletin

Office of Surface Mining Reclamation and Enforcement (OSMRE) Approval of Amendments to the West Virginia Regulatory Program



On August 8, 2024, OSMRE approved changes to WV CSR §38-2.

- §38-2-11.3.a.3 – Surety Bonds
Revised to allow an option for surety companies to submit proof to WVDEP that it holds a valid license issued by the WV Insurance Commissioner and meets certain reporting obligations in lieu of being T-Listed.
- §38-2-16.2.c.2 – Owner Compensation
Revised to state explicitly that the choice of remedy for subsidence-related material damage is the owners' and to replace the option of subsidence repair with an option to be compensated in the amount of the repair, subject to the limitation that the compensation does not exceed 120% of the pre-mining value of the structure or facility. Also, adds new language clarifying that this section neither creates additional property rights nor can it be construed as vesting in WVDEP the jurisdiction to adjudicate property rights disputes.

Link to §38 CSR 2 WV Coal Surface Mining Rule – OSM APPROVED ONLY
<https://dep.wv.gov/dmr/codes/Documents/38-2%20Rules%20OSM%20Approved%20on%20ly.pdf>

To clarify the procedures for enforcement of the revisions to §38-2-16.2.c.2, WVDEP has instituted a new policy titled “Subsidence Repair or Compensation for Material Damage to Structures or Facilities.”

Link to Policy:
<https://dep.wv.gov/dmr/new%20policies/Documents/Subsidence%20Repair%20or%20Compensation%20Policy.pdf>

All approvals are effective August 8, 2024.

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