

33 Drainage, Sediment Control and Water Monitoring

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SUBJECT: Sediment Control Ponds

DATE: January 19, 1993

The West Virginia Surface Mining Reclamation Regulations at 38-2-5.4(a) require that sediment control structures shall be designed, constructed, located, maintained, and used in accordance with the Regulations and in such a manner as to minimize adverse hydrologic impacts in the permit and adjacent areas to prevent material damage outside the permit area. Additionally, 38-2-5.4(b)(2) of the Regulations requires that sediment control structures be located as near as possible to the disturbed area.

Recent permit applications have proposed constructing sediment control ponds which are located considerable distances from the disturbed areas to be controlled. However, it has been observed that substantial amounts of sediment can be deposited in the stream channel, prior to the drainage from the disturbed area entering the pond. This condition would therefore, be in direct conflict with 38-2-5.4(a) of the Regulations, as it relates to material damage outside the permit area.

In the past, this agency has allowed the permittee to bond the section of the stream located between the disturbed area and the sediment control structure, thus making it part of the permitted operation. However, this practice does not comply with the intent of the Regulations as they relate to preventing material damage to the stream and requiring that sediment control structures be located as near as possible to the disturbed area.

Therefore, for those applications which propose to locate sediment control structures outside the main operational area, it shall be the policy of this agency to require these structures to be located absolutely as near as possible to the disturbed area to be controlled and no longer allow the area of stream in question to be bonded. Additional sediment control measures, i.e. silt fences, temporary sumps, etc., may need to be incorporated into the permittee's drainage plan where sections of unpermitted streams are located between the sediment control structure and the disturbed area to be controlled. Failure to consider this in permit or field application may result in violations occurring in the stream segment between the disturbed area and the drainage structure.

SUBJECT: Temporary Sediment Control Structures

DATE: March 1, 1993

The West Virginia Surface Mining Reclamation Regulations at 38-2-5.4(a) require that sediment control structures be constructed in appropriate locations for the purposes of controlling sedimentation. Furthermore, all runoff from the disturbed area shall pass through a sedimentation control system. The Regulations at 38-2-5.4(d)(1) require that, prior to any surface mining activities in the component drainage area of a permit controlled by a sediment control structure, that specific structure shall be certified as to construction in accordance with the plans, designs, and specifications set forth in the preplan, or in accordance with as-built plans.

Therefore, in order to comply with these requirements, each application for a new permit must include plans which show that sediment control structures can be constructed and certified prior to any surface mining activities within the area to be controlled by each structure. It is realized, however, that some structures cannot be constructed until a certain amount of mining has occurred, particularly in steep slope areas. This situation would require that a “temporary” sedimentation control system be designed, constructed, and certified in accordance with the preplan and Regulations. These “temporary” structures would then provide the required sediment control for the area being disturbed, until such time that the “permanent” sedimentation control system could be constructed and certified.

It is important to remember that all new permit applications must include specifications for the design, construction, maintenance, location, and certification of all sediment control structures. Please ensure that you continue to require this information in the preplan.

Furthermore, for existing permits that do not contain plans which adequately comply with these requirements, an application for permit revision should be required at the next mid-term review, permit renewal, or if violations of associated performance standards arise.

NOTE: This policy is also in the I & E Handbook, Series 5

SUBJECT: Sediment Dams, Embankment Type: Elimination of Principal Spillway

DATE: April 13, 1992

In accordance with the regulations Title 38, CSR2, Section 5.4 (c)(1), the principal spillway requirements may be waived by the Secretary if the emergency spillway is designed at a minimum to safely pass the peak rate of discharge of a 25-year, 24-hour frequency storm in an open channel constructed by non-erodible material and capable of maintaining sustained flows.

If the emergency spillway is excavated totally in solid rock, or if it is fully lined with properly placed concrete, it will be considered non-erodible. Further, for purposes of this regulation, non-erodible material may include a variety of engineered systems, such as but not necessarily limited to graded rock riprap, rock gabions, grout-filled filter point fabric systems, and synthetic meshes or grids (in which case the erosion protection may consist of a system incorporating soil, the mesh or grid, and the channel vegetation).

For any engineered channel lining, the approved plans must include adequate hydrologic and hydraulic analyses, information on material and system properties, and construction specifications to assure that the structure will perform and remain functional under design conditions. For instance, if a graded rock riprap lining is selected, the design must specify the rock gradation range (usually by size and percentage of the total), and general shape characteristics. In some cases, a graded bedding will be necessary.

The design certification of the sediment control structure must encompass the spillway and its erosion protection. The construction certification for the sediment control structure must likewise include the spillway and erosion protection.

SUBJECT: Procedure for Termination of Surface Water Monitoring

DATE: June 12, 1993

The West Virginia Surface Mining Reclamation Regulations at 38-2-14.7(a) provide for the termination of surface water monitoring as it relates to the Surface Mining Permit. 38-2-14.7(a) states “Monitoring shall continue until bond release unless the operator demonstrates that continued monitoring is unnecessary to achieve the purpose of the monitoring plan”.

Confusion has arisen regarding the procedure and the documentation necessary for the termination of surface water monitoring. In addition, inquiries have been made as to whether a surface water monitoring plan may be modified to delete surface water monitoring sites.

Therefore, the following is a description of the procedure and information to be utilized by this office in reviewing requests to terminate surface water monitoring.

1. The request should be processed as an insignificant permit revision;
2. For surface extraction mining operations, the permit and/or area of the permit associated with the request should meet the vegetation requirements of Phase II release. The request shall contain the following information:
 - One year of raw water data for the area after backfilling has occurred;
 - Surface water monitoring data for the requested area;
 - Comparison of the pre and post mining data to document the impacts of the operation; and
 - Documentation that the operation does not require chemical treatment to meet effluent limits.
3. For underground mining operation, the permit and/or area of the permit associated with the request should have been active for at least five (5) years. The request shall contain the following information:
 - One year raw water data for the area;
 - Surface water monitoring data for the requested area;
 - Comparison of the pre and during mining data to document the impacts of the operation; and
 - Documentation that the operation does not require chemical treatment to meet effluent limits.

The State can order resumption of the water monitoring program upon notice if the operation begins to chemically treat water and/or is adversely impacting the area.

SUBJECT:	Surface and Groundwater Monitoring
DATE:	February 27, 1992

In accordance with 3.22(g) and (h) of the Regulations, all permits shall contain a surface and groundwater monitoring plan. These plans shall identify monitoring site locations, quantity and quality parameters, and sampling frequency. Monitoring parameters shall include but are not limited to: total dissolved solids or specific conductance corrected at 25 degrees Celsius, total suspended solids, flow measurements, pH, acidity, alkalinity, total iron, total manganese and sulfates.

These parameters differ from the NPDES requirements for instream monitoring in that all of the parameters required by Article 3 are usually not required by the NPDES permit. The routine instream parameters for NPDES are flow, pH, Iron and Manganese.

The inspectors should inform their operators that they have to begin sampling and analyzing for the above listed parameters as soon as possible but no later than March 15, 1992. The sampling frequency should be detailed in the Surface Water Monitoring Plan contained in the Article 3 permit. If there is no plan in the permit, the sampling frequency must be at least quarterly. These reports should be submitted to the local inspector on a calendar quarterly basis.

After the inspector has reviewed the reports, they should be placed in the Regional file.

Also, if groundwater monitoring has not been waived, the operators must be sampling, analyzing, and reporting according to their groundwater monitoring plan contained in the Article 3 permit.

SUBJECT:	Guidance for Delineation of Ephemeral/Intermittent Streams
DATE:	October 26, 1999

Introduction

This guidance is being developed to conform with the Memorandum Opinion and Order of October 20, 1999 pertaining to buffer zones and water quality standards for intermittent/perennial streams.

Definitions

The Federal SMCRA definition of **ephemeral stream** which means “a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table” and **wet weather streams** defined in 46CSR1-2.22 “as streams that flow only in direct response to precipitation or whose channels are at all times above the water table” are synonymous.

Intermittent streams are defined in part, in 38CSR2-2.69, as “a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge”.

Intermittent streams are defined in 46CSR1-2.9 as those streams which have no flow during sustained periods of no precipitation and which do not support life whose life history requires residence in flowing waters for a continuous period of at least six (6) months.

Ordinary high water mark as defined in 33 CFR 329.11 is the line on the stream bank established by the fluctuation of water levels and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in soil characteristics, destruction or limits of terrestrial vegetation, and the presence of litter and debris.

Rationale

If a buffer zone waiver was requested in the application, the presumption is that the proposed fills, refuse facilities, sediment control facilities and ponds (“structures”) are in intermittent or perennial streams, unless clearly documented in the application.

The procedure below applies to structures for both pending applications and issued permits. It will be utilized to determine the local water table in order to delineate the point between ephemeral and intermittent stream segments. The applicant must demonstrate, to the satisfaction of the Secretary, that each structure is not located in an intermittent / perennial streams.

Procedure

Step 1. The applicant may utilize information contained in the application to demonstrate that the structure is not in the intermittent stream. If the data in the application shows stream flow (**not direct response to precipitation**) within the footprint of the structure, then it is in intermittent reaches of the stream. However, if the data in the application contains no documentation that the stream channel within the footprint of the structure is ephemeral, the applicant must proceed to Step 2.

Step 2. Field Evaluation (conducted jointly by applicant and agency).

- Delineate the upper most extent of the ordinary high water for each stream channel within the footprint. Locate this point on a map and provide sufficient supporting documentation.
- Begin walking downstream, until pooled or flowing water is observed in channel within the footprint. Locate this point on a map and provide sufficient supporting documentation.
- Dig a hole, preferably 12 inches or deeper, in the streambed outside the area of the pool to see if water is entering the hole, this should be apparent within a few minutes. If not, repeat process down stream until local water table is established or outside the buffer zone area. If no consensus can be reached between applicant and agency proceed to Step 3.

Step 3. A biological survey using the “single habitat EPA Rapid Bioassessment Protocol ” must be conducted for the footprint of the structure. If the footprint of the structure is void of indications of aquatic life then the area is deemed to be an ephemeral reach of the stream. However, if there is evidence of aquatic life present in the stream that requires less than six months of water flow to complete its life cycle, then the section of stream is deemed to be intermittent.

SUBJECT:	Stream Buffer Zone Policy
DATE:	March 15, 2004
Approval:	F. Joe Parker, Acting Director

This document is intended to clarify the agency's interpretation of Section 5.2 of the regulations and ensure consistency among applications.

Natural Drainways at 38 CSR 2 § 5.1:

Section 5.1 allows overburden placement in natural drainways provided that the sediment load is not materially increased and stream quality is not materially affected. A natural drainway is defined as any natural watercourse, which may carry water to the tributaries and rivers of the watershed.

Stream Channel Diversions at 38 CSR 2§ 5.3:

Section 5.3 provides for stream channel diversions as needed for safety, stability, protection against flooding and resulting damage to life and property if constructed in such a manner to avoid additional contributions of suspended solids to streams.

Sediment Control at 38 CSR 2 § 5.4:

Section 5.4 specifies construction of sediment ponds provided that they are as near as possible to the disturbed area and out of the perennial segments unless no other suitable location is available for the required controls and storage capacities. Such water retention structures are to be constructed in a manner so as to minimize adverse hydrologic impacts, to prevent material damage outside the permit area and assure safety of the public.

Habitat Restoration and Replacement in Riparian Zones at 38 CSR 2 § 8.2: Section 8.2 requires the avoidance where practicable and the restoration or replacement of riparian vegetation along streams where mining activities are unavoidable.

Mining Through Natural Watercourses at 38 CSR 2 § 14.8:

Section 14.8 recognizes mining through natural watercourses in steep slope mining operations. When such activities occur, the backfill area must provide channels, flumes or other device to insure stability and prevent erosion.

Lateral Underdrains and Excess Spoil Placement at 38 CSR 2 § 14.14 and the Act at 22-3-13(b)(22)(D):

Excess spoil placement in valley fills can occur in valleys that contain either springs, natural watercourses, or wet weather seeps whereby lateral underdrains shall be constructed from said wet areas to the main underdrains in such a manner that infiltration and entrapment of water within the fill will be prevented.

Intermittent or Perennial Streams at 38 CSR 2 § 5.2 (Stream Buffer Zone Rule):

From the examples including but not limited to those listed above, certain stream incursions are required, recognized, allowed for or contemplated in concert with normal surface coal mining and reclamation operations. Therefore, it is the interpretation of the agency that Section 5.2 of the regulations does not apply to areas of the permit where such activities have been provided for otherwise, such as those under Sections 5.1 (natural drainways), 5.3 (stream channel diversions and diversion ditches), 5.4 (instream pond footprints), 8.2 (stream restoration activities), and 14.14 (valley fill footprints).

However, Section 5.2 applies to the areas below or as in the example of major stream channel diversion, sometimes above the aforementioned exceptions and all other areas of the permit within 100 feet of an intermittent perennial stream. The Secretary may authorize disturbance to these areas only upon making the findings as stated below.

In this regard to Section 5.2 of the regulations, question P-1 of the surface mining application reads as follows:

P-1 Provide a map showing ephemeral/intermittent stream delineations in accordance with the WVDEP October 1999 Guidance Policy for all obvious channels within 100 feet of the proposal area.

Does this stream delineation indicate that a variance to disturb land within 100 feet of an intermittent or perennial stream is required?

_____ Yes _____ No

If yes, provide a narrative to show that surface mining activities will not:

- A. Adversely affect the water quantity of the stream;
- B. Adversely affect the water quality of the stream;
- C. Adversely affect other environmental resources of the stream (e. g. physical, biological, water uses, etc.);
- D. Cause or contribute to violations of applicable State or Federal water quality standards.

Identify as Attachment P-1

If a variance has been requested the applicant will check 'Yes' and ensure that all four variance requirements (as listed A through D) under P-1 have been adequately justified in the narrative for each individual area (below valley fill toe or other ponds, roads, encroachments, etc.) within 100 feet of any stream delineated as intermittent or perennial.

If a variance has not been requested to disturb land within 100 feet of an intermittent or perennial stream, the applicant will check 'No'.

SUBJECT: Constructed Outcrop Barriers

DATE: May 1, 2002

Approval: Matt Crum, Director, DMR

Standard engineering practices for constructed outcrop barriers shall include the following:

1. The design of the constructed barrier shall take into consideration site conditions.
2. The construction of the outcrop barrier shall occur simultaneously with the removal of the natural barrier and be located at or near the edge of the lowest coal seam being mined. Temporary measures must be place until the barrier is constructed.
3. The recommended outslope of the constructed barrier is 2h:1v with a static safety factor of 1.3.
4. If the proposed outslope is steeper than 2h:1v, the constructed barrier shall be designed to have a static safety factor of 1.5.
5. If constructed barrier is part of the sediment control system (sediment ditch), the constructed barrier shall be designed to have a static safety factor of 1.5.



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West Virginia Department of Environmental Protection

Bob Wise
Governor

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Cabinet Secretary

NOTICE

To: All Operators
From: F. Joseph Parker, Director
Date: March 3, 2004
Subject: Surface Water Runoff

The new Storm Water Runoff rule at 38 CSR 2-5.6.d require all active mining operations must be consistent with the requirements of 38 CSR 2-5.6. Therefore, we are providing notice to remind you that you are required to demonstrate in writing that the operation is in compliance with 5.6 of the rules or submit a revision that is consistent with the requirements of 5.6 of the rules according to the following schedule:

1. Operations with acreage greater than 400 acres within 180 days of January 1, 2004.
2. Operations with acreage between 200 and 400 acres within 360 days of January 1, 2004.
3. Operations with acreage between 100 and less than 200 acres within 540 days of January 1, 2004.
4. Operations with acreage between 50 and less than 100 acres within 720 days of January 1, 2004.
5. Operations with acreage less than 50 acres excluding haulroads, loadouts, and ventilation facilities within 900 days of January 1, 2004. In addition, an exemption can be considered on a case-by-case basis.

Active mining operations, as defined in 5.6.d of the rules, exclude permits that have obtained at least a Phase I release and are vegetated. In addition, permits or portions of permits that meet at least Phase I standards and are vegetated may be excluded on a case-by-case basis. If your permit will meet at least Phase I standards and be vegetated within the above-mentioned time frames for the particular permit acreage, a schedule may be provided in writing documenting when the permit will meet at least Phase I standards and will be vegetated. This includes a contingency plan in the event the permit does not meet Phase I standards and is not vegetated.

For permits approved **prior to August 2003** where information was submitted consistent with the requirements of 5.6 of the rules, you are required to document in writing what submittal (SMA #, IBR *, etc.) contains this information.

TO:	Permitting and I&E Personnel
SUBJECT:	SWROA Requirements for Existing Permits
DATE:	May 25, 2004
APPROVAL:	F. Joe Parker, Acting Director

The requirement to implement a surface water runoff analysis (SWROA) on active mining operations is provided by rule at 38-CSR2-5.6.d. of the West Virginia Surface Mining Regulations. After January 1, 2004, all existing permits must comply with the SWROA requirements according the following timetable based upon permitted acreage.

- | | |
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| • Permitted acreage > 400 acres: | SWROA due date is June 29, 2004 |
| • Permitted acreage ≥ 200 and ≤ 400 acres: | SWROA due date is December 26, 2004 |
| • Permitted acreage ≥ 100 and < 200 acres: | SWROA due date is June 24, 2005 |
| • Permitted acreage ≥ 50 and < 100 acres: | SWROA due date is December 21, 2005 |
| • Permitted acreage < 50 acres: | SWROA due date is June 19, 2006 |

If a SWROA has been previously approved for an exiting permit and the entire permit remains in compliance with those SWROA designs, the permittee needs only to submit a written statement, signed by a corporate official having signatory authority, to the permit supervisor. This statement needs to address that the permit is SWROA compliant and specify what approved permitting transaction contains the SWROA design, e.g., Amendment #1, Revision #5, etc. After verification, the associated ERIS entry description should be revised, if needed, to show that a SWROA compliance demonstration is included.

If a permit, or portion thereof, is not SWROA compliant, a permit revision will be required to incorporate the required designs into the permit, regardless of whether on-ground remedial construction is anticipated or not. Allowable exclusions to the SWROA requirement include permits, or portions thereof, that are vegetated and qualify for Phase I release standards. Such exclusions will require a written request to be submitted as a permit revision. Permit review should coordinate with the inspector to verify any requested SWROA exclusions on a case-by-case basis. The associated ERIS entry description should indicate that the revision contains a SWROA compliance demonstration.

If a permit will become Phase I eligible within the above-mentioned timeframes, a written schedule may be provided to the inspector by the permittee specifying when the permit will achieve these standards. The submitted schedule must also include a contingency plan for SWROA compliance in the event the permit fails to meet this stipulated timeframe. This statement needs to be signed by a corporate official having signatory authority.

SWROA submittals for “not started” permits may be postponed if the permittee provides a written statement to the inspector stating that the permit’s SWROA will be performed and submitted as a permit revision prior to permit activation. This statement needs to be signed by a corporate official having signatory authority.

SUBJECT:	Surface Water Runoff Analysis (SWROA)
DATE:	March 27, 2006
<i>Revised</i>	<i>July 10, 2006</i>
APPROVAL:	Lewis Halstead

This procedure shall be utilized to satisfy the SWORA requirement described in 38 CSR 2 §5.6.d.1.e for active mining operation with permitted acreage less than 50 acres.

If permit is less than 50 acres and **it is** a haulroad, loadout, or ventilation facility, the permittee does not need to do anything, as they are exempt.

Permits other than haulroad, loadouts, and ventilation facilities must do one of the following:

- Request an exemption in writing (These will be considered on a case by case basis.)
- Demonstrate in writing that the operation is in compliance; or
- Submit a Revision that includes a SWROA

The request for an exemption or the demonstration can be in a form of a letter and shall be included in an application for permit revision (MR-4-PR).

TO:	Permitting and I&E Personnel
SUBJECT:	SWROA Modeling, Runoff Monitoring, and Data Recording
DATE:	November 24, 2015
APPROVAL:	Harold D. Ward, Acting Director

Surface Water Runoff Analysis (SWROA) requirements were codified in the West Virginia Surface Mining Reclamation Regulations (38-CSR2-5.6, et seq.) and became effective June 1, 2003. At its inception, SWROA was effectively applied to existing permits and became a routine design requirement for future permits. Nevertheless, some confusion still exists relating to hydrologic modeling, runoff monitoring, data collection, field reporting, and termination aspects of this rule. The purpose of this policy is to provide clarification for permits containing SWROA designs.

Evaluation Point Siting Requirements

Any evaluation point (EP) chosen for hydrologic modeling shall be located so that pre-mining, during-mining, and post-mining peak flow volumes can be compared at a common location. To comply with the “no-net increase” SWROA requirement, calculated during-mining and post-mining peak flow volumes cannot exceed those of the pre-mining condition. Also, EP locations must be as close as practical to the permitted acreage while being located upstream of any critical structures such as, houses, buildings, stream constrictions/encroachments, etc.

SWROA pre-mining modeling should consider existing ground cover conditions at the time of permit issuance. Hydrologic analyses for the pre-mining condition must rely on realistic curve number and hydrologic soil group (HSG) assumptions applicable to actual on-ground conditions. HSG assumptions shall be substantiated by using the United States Department of Agriculture – Natural Resources Conservation Service – Web Soil Survey, as follows:
<http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

Failure to account for available sheet flow can exaggerate peak flows from pre-mining areas and result in reduced SWROA protection. Therefore, all pre-mining flow calculations should assume sheet flow conditions of three hundred feet (300 ft.) at the onset of the hydraulic flow path through any component watershed, unless otherwise documented.

SWROA Design Storm

The minimum SWROA design storm is a 25 year/24 hour precipitation event. The SWROA design storm is based upon the design standard applied to the most immediate hydraulic structure upstream of each EP within the associated watershed area. Typically, this will result in a 25 year/24 hour event to base SWROA designs upon, but occasionally a 100 year/24 hour design standard may apply. Other instances triggering the 100 year/24 hour SWROA design requirement would be the presence of occupied dwellings or significant stream constrictions/encroachments located upstream of an EP.

Runoff Monitoring Plan and Data Collection (U-3)

The intent of a site-specific runoff monitoring plan for a permit is to accumulate rainfall/runoff data for precipitation events of 1 year/24 hour or greater until the permit meets phase II release requirements. The runoff monitoring location(s) chosen by the permittee should be easily accessible and be representative of component watersheds within the permit boundaries where mining disturbance is expected to result. Rainfall and flow measurement methodologies should be adequately detailed in Item U-3.

Any permit having an approved SWROA with an incomplete or missing U-3 monitoring plan that fails to fulfill the above mentioned goals will require a permit revision to incorporate an acceptable monitoring plan.

The permittee is required to record daily precipitation and report monthly. Additionally, peak runoff resulting from any precipitation event of 1 year/24 hour or greater, must be measured at the designated location(s) identified in Item U-3 and be recorded. All recorded data, including rainfall data, shall be reported to the Secretary on a monthly basis in the format specified by Item U-3 of the approved permit.

Inspection of Drainage/Sediment Structures and Reporting on Integrity/Function

Any precipitation event of 1 year/24 hour or greater, based upon the permittee's designated rain gauge in Item U-3, will require the permittee to conduct a permit-wide inspection to evaluate all constructed drainage/sediment structures. Such inspection should verify that the structures remain structurally intact and can still function as intended. A report is to be submitted to the Secretary addressing such findings. Present rule language allows 48 hours before a report has to be submitted to the Secretary.

Reporting is to be in written format so that a tangible record can be included in the permit file. Reporting to the inspector via email will be deemed acceptable; a telephone call to the inspector is also acceptable provided that timely follow-up (within one week) is submitted in written form.

Implementation/Termination of SWROA Requirements

All permits are required to have approved SWROA designs prior to any on-ground disturbance, unless otherwise exempted. For permits less than 50 acres, SWROA may be exempted on a case-by-case basis, if adequately justified and approved in a permit revision. Further, haulroads, loadouts, and ventilation facilities are excluded from any SWROA requirements. If a SWROA exemption is granted for any permit, all aspects of the SWROA rule are waived, including U-3 rainfall/runoff monitoring.

When a permit becomes Phase II eligible and complete drainage structure removal occurs, the SWROA runoff monitoring plan (U-3) can be terminated. At this time, recording of rainfall and resulting runoff responses will no longer be required. The permittee should submit a letter to the inspector addressing proposed SWROA termination for a permit.