

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 86, 87, 88, 89 AND 90]

Incidental Coal Extraction, Bonding, Enforcement, Sediment Control and Remining Financial Guarantees

The Environmental Quality Board (Board) proposes to amend Chapters 86, 87, 88, 89 and 90. The proposed rulemaking incorporates amendments necessary to bring the Commonwealth's regulatory program into conformance with Federal standards for State coal mining regulatory programs. In addition, the proposed rulemaking revises some requirements for the Remining Financial Guarantee Program. The amendments affect requirements relating to incidental coal extraction, bonding, enforcement, sediment control and remining financial guarantees.

This proposal was adopted by the Board at its meeting of March 16, 2010.

A. *Effective Date*

The proposed amendments will become effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact William Allen, Chief, Division of Monitoring and Compliance, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Richard S. Morrison, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service at (800) 654-5988 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at <http://www.depweb.state.pa.us>.

C. *Statutory Authority*

The rulemaking is proposed under the authority of section 5 of The Clean Streams Law (35 P. S. § 691.5); sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. *Background and Purpose*

This proposed amendments satisfy requirements for maintaining a state primacy program under the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201—1328) (SMCRA). The amendments in this rulemaking pertain to Federally required program changes described in 30 CFR 938.16(rr), (tt), (vv), (ww), (xx), (zz), (aaa), (ccc), (iii), (jjj), (nnn), (ppp) and (ttt) (relating to required regulatory program amendments). These requirements were imposed by the Federal Office of Surface Mining Reclamation and Enforcement (OSM) on April 8, 1993 ((aaa), (ccc), (iii) and (jjj)), December 29, 1993 ((rr), (tt), (vv), (ww), (xx) and (zz)), July 20, 1994 (nnn) and November 7, 1997 ((ppp) and (ttt)).

Resolving these required amendments is necessary for the Commonwealth to maintain primacy in regulating coal mining. Failure to resolve these program deficiencies could result in OSM asserting its jurisdiction over all or part of the mining regulatory program. There is also a risk that the Federal funding for the Abandoned Mine Land Reclamation Program could be reduced or eliminated if these deficiencies persist.

These requirements relate to notification of the decision by the Department to approve the continuation of an exemption from the permitting requirements for coal that is mined incidental to noncoal mining, violation review for permit approval, permitting exploration on land designated as unsuitable for mining, self-bonding and the stability of large impoundments.

The amendments in this rulemaking represent the outcome of discussions between the Department and OSM relative to the fulfillment of requirements set forth in the Federal rules. The amendments in this rulemaking have been informally approved by OSM. These changes will be formally submitted to OSM as an amendment to the Commonwealth's coal mining program and the Department will request that OSM determine that the outstanding deficiencies noted previously have been satisfied.

In addition, this proposed rulemaking addresses issues that have surfaced in administering the Remining Financial Guarantee Program. These issues are related to operational requirements and the conversion to a conventional bonding system (CBS) undertaken beginning in August 2001.

When the current remining financial guarantee regulations were finalized in 1996, the Department used an alternate bonding system (ABS). The Department initiated the transition from an ABS to a CBS in 2001 and completed the implementation of the program in 2002. Under the ABS, bond amounts were based on per-acre rates and bond funds were supplemented by a per-acre reclamation fee and other funds to assure that the Commonwealth had enough bond money to complete the reclamation in the case of a forfeiture.

Under the CBS, the reclamation cost is calculated using bond rate guidelines for the specific reclamation tasks. Bond rate guidelines are updated routinely to keep up with changes in reclamation costs. The CBS is also referred to as full-cost bonding because the bond amount is determined based on the total projected reclamation cost. Bond amounts are no longer calculated on a per-acre basis. The regulations governing the Remining Financial Guarantee Program are being amended to better align with the transition to full-cost bonding for all mining operations.

Finally, the proposed rulemaking includes several minor editorial changes needed to correct spelling, spacing and punctuation errors.

E. *Summary of Regulatory Requirements*

OSM Program Deficiencies Remining Financial Guarantees and Permit Application Fees

§ 86.1. Definitions.

The Noncoal Surface Mining Conservation and Reclamation Act (NSMCRA) (52 P. S. §§ 3301—3326) is being added to the list for the definition of "Acts." When Chapter 86 was promulgated in 1983, noncoal mining was regulated under the authority of SMCRA. In 1984, the NSMCRA was enacted, superseding the role of

SMCRA for noncoal mining. To comply with Federal program requirements (and to have an effective regulatory program) relating to incidental extraction of coal under noncoal mining permits, it is necessary to include NSMCRA in the applicable Acts.

This amendment was required, in part, by the Federal requirements in 30 CFR 938.16(tt).

The definition of “owned or controlled” and “owns or controls” is being corrected to include the current reference to the Federal regulations relating to definitions. This is necessary because of Federal regulation revisions that resulted in the definition being placed in a different section.

§ 86.5. *Extraction of coal incidental to noncoal surface mining.*

Subsection (m) is amended to add the requirement for the Department to notify interested parties in the case that the Department decides not to revoke an exemption from the coal permitting requirements.

This amendment was required under the Federal requirements in 30 CFR 938.16(ppp).

§ 86.36. *Review of permit applications.*

This section is being amended to delete the 3-year time limitation for the review of an outstanding Federal violation.

This amendment was required under the Federal requirements in 30 CFR 938.16(rr).

§ 86.37. *Criteria for permit approval or denial.*

Subsection (a)(8) is amended to include a reference to the Federal definition of a violation.

This amendment was required under the Federal requirements in 30 CFR 938.16(ww). This amendment also resolves the deficiencies in 30 CFR 938.16(vv) and (xx).

§ 86.62. *Identification of interests.*

Subsection (b)(2)(ii) is being amended to correct the reference to the Federal minimum enforcement action.

This amendment was required under the Federal requirements in 30 CFR 938.16(zz).

Subsection (c) is being amended to include the permittee name and address as required information relating to permits for related entities and to clarify that issued permits must be reported as part of an application.

This amendment was required under the Federal requirements in 30 CFR 938.16(aaa).

§ 86.103(g). *Procedures.*

Subsection (g) is being added to require that the procedures for processing an assertion of valid existing rights follow the Federal requirements by incorporating the Federal procedural requirements by reference.

This amendment was required under the Federal requirements in 30 CFR 938.16(ccc).

§ 86.129. *Coal exploration on areas designated as unsuitable for surface mining operations.*

Subsection (b) is being amended to provide specific procedures and requirements for permit applications for exploration activities on lands designated as unsuitable for mining. The detailed requirements mirror the Federal procedures and standards for approval. This amendment also results in the renumbering of current subsection (b)(1) and (2).

This amendment was required under the Federal requirements in 30 CFR 938.16(ccc).

§ 86.133. *General requirements.*

Subsection (f) is being amended to clarify that a permit is required for exploration activities on lands designated as unsuitable for mining.

This amendment was required under the Federal requirements in 30 CFR 938.16(ccc).

§ 86.159. *Self-bonding.*

Subsection (l)(1) is amended to incorporate the language in the Federal regulations regarding the indemnification of self-bonds in the case of a corporate applicant that has a parent company. To date, there have not been any coal mine operators to use self-bonding.

This amendment was required under the Federal requirements in 30 CFR 938.16(nnn).

§ 87.112. *Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.*

Subsection (c) is amended to add a requirement to protect miners or the public. Subsection (c)(1) is amended to add the required seismic safety factor.

These amendments were required under the Federal requirements in 30 CFR 938.16(iii).

§ 88.321. *Disposal of noncoal wastes.*

This section is being amended to include all noncoal wastes and to apply the prohibition to impoundments.

This amendment was required under the Federal requirements in 30 CFR 938.16(ttt).

§ 89.111. *Large impoundments.*

Subsection (c) is amended to add a requirement to protect miners or the public. Subsection (c)(1) is amended to add the required seismic safety factor.

These amendments were required under the Federal requirements in 30 CFR 938.16(iii).

§ 90.112. *Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.*

Subsection (c) is amended to add a requirement to protect miners or the public. Subsection (c)(2) is amended to match the language in the Federal regulations regarding spillway capacity for large impoundments at coal refuse disposal sites.

These amendments were required under the Federal requirements in 30 CFR 938.16(jjj).

§ 90.133. *Disposal of noncoal wastes.*

This section is being amended to include all noncoal wastes and to apply the prohibition to impoundments.

This amendment was required under the Federal requirements in 30 CFR 938.16(ttt).

Remining Financial Guarantees

§ 86.165. *Failure to maintain proper bond.*

Subsection (a) is amended to add that an operator’s obligation to maintain a proper bond includes the payments required under the Remining Financial Guarantee Program. This amendment will allow the enforcement of the payment requirement using consistent procedures.

§ 86.281. *Financial guarantees to insure reclamation—general.*

Subsection (c) is amended to provide that the Department will designate a specified amount in the financial guarantees special account as financial assurance for the reclamation obligation of a permit with an approved remining area, rather than reserving a portion of those funds. This change is necessary in light of the conversion to a conventional bonding program. Under conventional bonding, the total reclamation cost is accounted for when determining the bond amount, thus enabling the Department to calculate more precisely the amount of funds that may need to be used to reclaim an approved remining area covered by a remining financial guarantee.

Subsection (e) is amended in conjunction with the revision in subsection (c) and to clarify that all of the bonds forfeited (including the Remining Financial Guarantee) on a permit are to be used for reclamation of the mine site (including the remining area). It also is amended to allow, rather than require, the use of additional funds from the Remining Financial Assurance Fund if they are needed to complete the reclamation of the mine site. This change is based primarily on the concept that under conventional bonding, the bond amount posted is the amount required to complete the reclamation. In addition, it provides the Department with flexibility to use money from the Remining Financial Assurance Fund to pay for the necessary reclamation.

§ 86.282. *Participation Requirements.*

Subsection (a)(2) is being revised to delete the option of using the ability to obtain a letter of credit as a demonstration of financial responsibility. Experience in implementing the Remining Financial Guarantee Program has shown that the ability to obtain a letter of credit from a bank is not a good test of financial responsibility.

§ 86.283. *Procedures.*

Subsection (a)(1) is amended to change the way the amount of the payment is determined as a result of the change to conventional bonding. The deleted language is based on the per-acre bond rate system. The proposed wording is based on the amount of the remining financial guarantee.

Subsection (d) is amended to clarify how financial guarantee funds are allocated.

Subsection (e) is amended to delete language relating to the process of “bond rollover” that was allowed under the ABS. The concept of “bond rollover” is not pertinent to conventional bonding.

Subsection (f) is being added to reduce the potential risk of insolvency of the Remining Financial Assurance Fund by requiring the replacement of a remining financial guarantee in the event a pollutional discharge occurs at a mine site bonded with a remining financial guarantee.

§ 86.284. *Forfeiture.*

Subsections (a) and (c) are amended to be consistent with the changes made in § 86.281(c) and (e).

Corrections

§ 86.195. *Penalties against corporate officers.*

Subsection (b) is amended to add an “s” to the word “officer.”

§ 86.211. *Enforcement—general.*

Subsection (d) is amended to use the word “clear” instead of “clean.”

§ 86.281. *Financial guarantees to insure reclamation—general.*

Subsection (d) is amended to add the article “The” at the beginning and correct two typographical errors.

§ 87.119. *Hydrologic balance: water rights and replacement.*

Subsection (g) is being corrected to remove attorney fees and expert witness fees from the specific costs that may be recovered.

This correction is necessary due to a revision to the SMCRA.

F. Benefits, Costs and Compliance

The amendments will enable the Commonwealth to fulfill its primacy obligations and retain primary enforcement responsibility over coal mining operations. They will also allow for more effective management of the Remining Financial Guarantee Program.

Compliance Costs

It is not anticipated that the proposed changes will impose any total additional compliance costs on the regulated community.

Compliance Assistance Plan

The Department will provide written notification to all coal mine operators to inform them of the final promulgation of these regulatory changes. The Department will also hold roundtable meetings with mine operators and consultants to explain program changes and answer questions.

The Department will update its fact sheets explaining the regulations. The Department will continue to meet with affected landowners and assist them in understanding the amended regulations.

Paperwork Requirements

The amendments will require the Department to update its fact sheets explaining the law and regulations.

G. Pollution Prevention

The proposed rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multimedia pollution prevention approach of existing requirements in Chapter 86 (relating to surface and underground coal mining: general).

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 21, 2010, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed rulemakings, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemakings within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory

review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemakings to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 1, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one-page in length and must also be received by the Board by June 1, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by June 1, 2010. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JOHN HANGER,
Chairperson

Fiscal Note: 7-458. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter A. GENERAL PROVISIONS

§ 86.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

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Acts—Include the following:

* * * * *

(ix) The Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326).

* * * * *

Owned or controlled and owns or controls—One or a combination of the relationships specified in subparagraphs (i)—(iv):

* * * * *

(iii) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not

in fact have the authority directly or indirectly to determine the manner in which the relevant coal mining activity is conducted:

* * * * *

(E) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record a percentage of the entity as established in the definition of "owned or controlled and owns or controls" in 30 CFR [773.5] 701.5 (relating to definitions).

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§ 86.5. Extraction of coal incidental to noncoal surface mining.

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(m) If the Department has reason to believe that a specific mining area was not exempt under this section at the end of the previous reporting period, is not exempt or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department will notify the operator that the exemption may be revoked and the reasons therefore. The exemption will be revoked unless the operator demonstrates to the Department within 30 days that the mining area in question should continue to be exempt. The operator and interested parties will be immediately notified of the revocation or of the decision not to revoke the exemption.

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Subchapter B. PERMITS
REVIEW, PUBLIC PARTICIPATION AND APPROVAL, DISAPPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

§ 86.36. Review of permit applications.

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(c) The Department will verify from the schedule submitted under § 86.63 (relating to compliance information) or other information available to the Department that coal mining activities owned or controlled by the applicant, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls" in § 86.1 (relating to definitions) are not currently in violation of the acts or the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328), or that the violation is in the process of being corrected to the satisfaction of the regulatory authority, department or agency which has jurisdiction over the violation of the acts or the Surface Mining Control and Reclamation Act of 1977 and a law, rule or regulation of a department or agency of the United States or of a state in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a coal mining activity [during the 3-year period prior to the date of application].

§ 86.37. Criteria for permit approval or denial.

(a) A permit or revised permit application will not be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of the information in the application or from information otherwise available, which is documented in the approval, and made available to the applicant, that the following apply:

* * * * *

(8) The applicant has submitted proof that a violation related to the mining of coal by the applicant, a person

owned or controlled by the applicant or a person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls" in § 86.1 (relating to definitions) or by a related party of the acts, a rule, regulation, permit or license of the Department has been corrected or is in the process of being corrected to the satisfaction of the Department, whether or not the violation relates to an adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. **For the purpose of this section, the term "violation" includes the types of violations listed in the definition of "violation" in 30 CFR 701.5 (relating to definitions).** A permit issued under this paragraph on the basis that a violation is in the process of being corrected or pending the outcome of an appeal, and the appropriate regulatory authority program having jurisdiction over the violation provides for a stay of execution of the abatement procedure or a court of competent jurisdiction has issued a supersedeas providing that relief, will be issued conditionally.

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MINIMUM REQUIREMENTS FOR LEGAL FINANCIAL COMPLIANCE AND RELATED INFORMATION

§ 86.62. Identification of interests.

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(b) *Statement.* An application [**shall**] **must** contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For all entities, the application [**shall**] **must** contain the following information, as applicable, for each person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls" in § 86.1 (relating to definitions) except that the submission of a [**social security**] **Social Security** number is voluntary:

(1) The name, address, [**social security**] **Social Security** number and employer identification number of every:

* * * * *

(2) For each person listed in paragraph (1), list the following:

* * * * *

(ii) The date the position or stock ownership was assumed, and when submitted under § [**86.63 (relating to compliance information)**] **86.212(c) (relating to Federal minimum enforcement action)**, the date of departure from the position.

* * * * *

(c) *Related entity information.* Include the following:

(1) List the names of entities who, under the definition of "owned or controlled" or "owns or controls" in § 86.1, own or control the applicant or who are owned or controlled by the applicant and provide the following information for each entity:

(i) Identifying numbers, including employer identification number, Federal or State permit numbers, **permittee name and address** and the MSHA numbers with date of issuance for each permit.

(ii) The application number or other identifier, [**of**] and the regulatory authority for other **issued or pending**

mining operation permit applications filed by the entity in any state in the United States.

* * * * *

(2) For each person listed in subsection (b)(1), who is, or has been, associated with another entity as an owner or controller, under the definition of "owned or controlled" or "owns or controls" in § 86.1, within the 5-year period preceding the date of application, provide the following information:

* * * * *

(iii) The application number or other identifier, [**of**] and the regulatory authority for other **issued or pending** mining operation permit applications filed by the entity with which the person is affiliated in any state in the United States.

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Subchapter D. AREAS UNSUITABLE FOR MINING GENERAL PROVISIONS

§ 86.103. Procedures.

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(g) An application that includes an assertion of valid existing rights must meet the requirements and follow the procedures established in 30 CFR 761.16 (relating to submission and processing of requests for valid existing rights determinations).

CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING

§ 86.129. Coal exploration on areas designated as unsuitable for surface mining operations.

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(b) Coal exploration may be conducted on an area designated as unsuitable for surface mining operations in accordance with this chapter if the following apply:

(1) The person conducting coal exploration obtains an exploration permit from the Department under this section which meets the following conditions:

(i) The permit application demonstrates that the requirements of this section and § 86.134 (relating to coal exploration performance and design standards) will be met.

(ii) Public notice of the application and opportunity to comment is provided in accordance with §§ 86.31 and 86.32 (relating to public notices of filing of permit applications; and opportunity for submission of written comments or objections on the permit application).

(2) The permit application must contain the following information:

(i) The name, address and telephone number of the applicant.

(ii) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.

(iii) A narrative describing the proposed exploration area.

(iv) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

(v) An estimated timetable for conducting and completing each phase of the exploration and reclamation.

(vi) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.

(vii) A description of the following:

(A) Cultural or historical resources listed on the National Register of Historic Places.

(B) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places.

(C) Known archeological resources located within the proposed exploration area.

(D) Other information which the regulatory authority may require regarding known or unknown historic or archeological resources.

(viii) A description of any endangered or threatened species listed under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544) identified within the proposed exploration area.

(ix) A description of the measures to be used to comply with the applicable requirements of § 86.134 (relating to coal exploration performance and design standards).

(x) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

(xi) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map must specifically show the following:

(A) Existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines.

(B) Proposed locations of trenches, roads, and other access routes and structures to be constructed; and the location of proposed land excavations.

(C) The location of exploration holes or other drill holes or underground openings.

(D) The location of excavated earth or waste-material disposal areas.

(E) The location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973.

(xii) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(xiii) For any lands listed in § 86.102 (relating to areas where mining is prohibited or limited), a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of § 86.102, and, when applicable, with the agency with primary jurisdiction over the feature with

respect to the values that caused the land to come under the protection of § 86.102.

(3) The exploration is consistent with the designation.

[(2)] (4) The exploration will be conducted to preserve and protect the applicable values and uses of the area under Subchapter E (relating to coal exploration) [and the Department has issued written approval for the exploration].

(5) The permit term may not exceed 2 years and the permit may not be renewed or transferred.

(6) The amount of coal removed shall be limited to the quantity needed for testing and analysis and may not exceed 250 tons.

(7) The application shall be subject to the criteria for permit approval or denial in § 86.37 (relating to the criteria for permit approval or denial) and 30 CFR 772.12(d) (relating to permit requirements for exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations), and the requirements for final permit action in § 86.39 (relating to final permit action).

Subchapter E. COAL EXPLORATION

§ 86.133. General requirements.

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(f) Coal exploration on lands where a petition to declare an area unsuitable for mining has been received by the Department or on lands designated unsuitable for mining shall [by] be conducted only after [written approval is granted by] a permit has been obtained from the Department. This permit requirement may not be waived. The Department may prescribe conditions and requirements necessary to preserve the values sought to be protected in the petition before approving coal exploration in these areas. The exploration activities shall be conducted in accordance with § 86.129 (relating to coal exploration) to insure that the exploration activity does not interfere with a value for which the area has been designated unsuitable for mining.

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Subchapter F. BONDING AND INSURANCE REQUIREMENTS

FORM, TERMS AND CONDITIONS OF BONDS AND INSURANCE

§ 86.159. Self-bonding.

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(1) The self-bond shall be executed by:

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(2) If the applicant is a subsidiary corporation, the applicant's parent corporation shall be a party to the self-bond which shall establish the applicant and its parent corporation as co-indemnitors under the self-bond. Corporations applying for a self-bond, and parent and nonparent corporations guaranteeing an applicant's self-bond, shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of the authorization shall be submitted to the Department along with an affidavit certifying that the agreement is valid under all applicable Federal and State laws. In addition, the corporate guarantor shall provide a copy of the corporate authorization dem-

onstrating that the corporation may guarantee the self-bond and execute the guarantee agreement. The parent corporation may cancel its obligations under the self-bond upon 120 days written notice to the Department, but the cancellation will not be effective until the self-bond is replaced with an alternate form of bonding authorized [by] under this subchapter and approved by the Department.

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§ 86.165. Failure to maintain proper bond.

(a) If a permittee fails to promptly post additional bond required under § 86.152 (relating to adjustments), or fails to make timely deposits of bond according to the schedule submitted under § 86.161 (relating to phased deposits of collateral), or fails to make payments under § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Loan Fund) or fails to maintain subsidence insurance provided in § 86.162 (relating to subsidence insurance in lieu of bond), or fails to make annual payments for financial guarantees as required under § 86.283(a) (relating to procedures), the Department will issue a notice of violation to the permittee, and if the permittee fails to correct the violation within 15 days of the notice, the Department will issue a cessation order for the permittee's permit areas and thereafter take actions that may be appropriate.

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Subchapter G. CIVIL PENALTIES FOR COAL MINING ACTIVITIES

GENERAL PROVISIONS

§ 86.195. Penalties against corporate officers.

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(b) Whenever the Department issues an order to an operator for failing to abate violations contained in a previous order, it will send by certified mail to each corporate officer listed in the surface mining operator's license application under § 86.353 (relating to identification of ownership), or to each corporate officer listed in a coal mining activities application under § 86.62 (relating to identification of interests), a copy of the failure to abate order and a notice of the [officer's] officer's liability under this section. If the violations are not abated within 30 days of issuance of the failure to abate order, the Department may assess a civil penalty against each officer receiving the notice provided by this subsection.

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Subchapter H. ENFORCEMENT AND INSPECTION

GENERAL PROVISIONS

§ 86.211. Enforcement—general.

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(d) If one or more of the conditions in subsection (b) exist, the operator may request the Department to grant an abatement period exceeding 90 days. The abatement period granted will not exceed the shortest possible time necessary to abate the violation. The operator has the burden of establishing by [clean] clear and convincing proof that he is entitled to an extension under this section. In determining whether or not to grant an abatement period exceeding 90 days, the Department may consider relevant written information from the operator or other sources.

Subchapter J. REMINING AND RECLAMATION INCENTIVES

BONDING INCENTIVES

§ 86.281. Financial guarantees to insure reclamation—general.

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(b) The financial guarantee applies to a permit with reining areas approved by the Department. Operators who wish to participate in this program shall demonstrate, for each permit, their eligibility under §§ 86.253 and 86.282 (relating to operator and project qualification; and participation requirements).

(c) For each approved permit of an eligible operator for a reining area, the Department will [reserve a portion] designate a specified amount of the financial guarantees special account in the Reining Financial Assurance Fund [as collateral for] to financially assure reclamation obligations on the permit with an approved reining area. [The amount of the reserve will be the average cost per acre for the Department to reclaim a mine site multiplied by the number of acres in the reining area] The specific amount designated will be the estimated cost for the Department to reclaim the reining area.

(d) The Department may not issue financial guarantees on a permit in excess of 10% of the then current amount in the special account in the Reining Financial [Assurance] Assurance Fund. The Department will not issue financial guarantees [to a] to a mine operator if the aggregate amount of financial guarantees on permits issued to the operator will exceed 30% of the then current amount in the special account in the Reining Financial Assurance Fund. The Department will not issue additional financial guarantees when the aggregate amount of outstanding financial guarantees exceeds that amount resulting from dividing the current amount in the special account in the Reining Financial Assurance Fund by the historical rate of bond forfeiture under § 86.181 (relating to [bond forfeiture-] general) with a margin of safety determined by the Department.

(e) Upon declaration of forfeiture, the [reserved funds] specified amount of the financial guarantee from the financial guarantee special account will be used with other bonds forfeited on the permit by the Department to complete reclamation of the [reining area] mine site in accordance with the procedures and criteria in §§ 86.187—86.190. If the actual cost of reclamation by the Department exceeds the [amount reserved] specified amount of the financial guarantee, additional funds from the Reining Financial Assurance Fund [will] may be used to complete reclamation.

§ 86.282. Participation requirements.

(a) Upon completion of the technical review of a permit application and receipt of a request for bond, an operator may apply to participate in the financial guarantees program for a reining area if the requirements of § 86.253 (relating to operator and project qualification) are met. To participate in this program, an operator shall demonstrate to the Department's satisfaction one of the following:

* * * * *

(2) The operator would be able to obtain a surety bond [**or letter of credit collateral bond**] otherwise required under this chapter. The operator will demonstrate this by submitting a letter of acceptance from a surety company licensed to do business in this Commonwealth and which writes bonds for reclamation of mine sites located in this Commonwealth or by submitting a surety bond [**or letter of credit collateral bond**] for an **equal portion of the remaining [permit area] reclamation liability for the permitted remining site.** The acceptance letter [**shall**] **must** indicate the complete name and address of the surety company and state that the surety company would write the bond.

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§ 86.283. Procedures.

(a) An operator's participation in the financial guarantees program is subject to the following:

(1) Annual payments will be 1% of the total amount of the [**number of acres of remining area to be affected multiplied by the Department's current applicable bond rates**] **remining financial guarantee.**

* * * * *

(d) The Department will issue a letter to the operator specifying the amount of money in the financial guarantees special account in the Remining Financial Assurance Fund [**which has been reserved as collateral**] **allocated as financial assurance** for the operator's reclamation obligations on the remining area. A copy of the letter will be kept in the operator's permit application file.

(e) The obligation covered by the financial guarantees program bond will be reduced or released prior to any other bond submitted by the operator to cover the reclamation obligations of that permit. [**This portion of the bond may not be used to cover the reclamation obligation on another section of the permit area.**]

(f) **If a discharge not meeting the effluent criteria of § 87.102, § 88.92, § 88.187, § 88.292, § 89.52 or § 90.102 develops on a permit on which a financial guarantee is being used, the operator shall within 90 days of receipt of written notice by the Department replace the financial guarantee with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge. If an acceptable bond has not been received and approved by the Department within the specified time limit, the Department will issue a cessation order for mining activities except for reclamation and other activities required to maintain the permit area.**

§ 86.284. Forfeiture.

(a) Upon forfeiture under § 86.181 (relating to general), the Department will declare forfeit the **specified amount [reserved for the operator] of the financial guarantee for the permit** in the financial guarantees special account in the Remining Financial Assurance Fund in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

* * * * *

(c) Upon declaration of forfeiture, the Department will use the bond money **posted by the operator and [reserved funds] the specified amount of the fi-**

ancial guarantee to complete the reclamation of the mine site in accordance with the procedures and criteria in §§ 86.187—86.190.

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CHAPTER 87. SURFACE MINING OF COAL

Subchapter E. SURFACE COAL MINES: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 87.112. **Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.**

* * * * *

(c) If the embankment is more than 20 feet in height as measured from the upstream toe of embankment to the crest of the emergency spillway or has a storage volume of 20 acre-feet or more, [**or**] is located where failure could cause loss of life or serious property damage **or otherwise poses a hazard to miners or the public, it [shall] must:**

(1) Be stable under all probable conditions of operation and be designed and constructed to achieve a static safety factor of 1.5 or other higher static safety factor required by the Department **and a seismic safety factor of at least 1.2.**

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§ 87.119. **Hydrologic balance: water rights and re-placement.**

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(g) *Operator cost recovery.* A surface mine operator or mine owner who appeals a Department order, provides a successful defense during the appeal to the presumptions of liability and is not otherwise held responsible for the pollution or diminution is entitled to recovery of reasonable costs incurred, including, but not limited to, the costs of temporary water supply, design, construction, and restoration or replacement costs [**, attorney fees and expert witness fees**] from the Department.

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CHAPTER 88. ANTHRACITE COAL

Subchapter D. ANTHRACITE REFUSE DISPOSAL: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 88.321. **Disposal of noncoal wastes.**

Noncoal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage and other hazardous wastes shall be disposed of or stored temporarily in accordance with the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the regulations promulgated thereunder. Storage shall be [**such**] **in a manner** that fires are prevented and [**that**] the area remains stable and suitable for reclamation and revegetation. [**Waste**] **Noncoal waste materials [with low ignition points]** including, but not limited to, wood, cloth, waste paper, oil, grease and garbage may not be deposited on or near a coal refuse disposal pile **or impounding structure.**

CHAPTER 89. UNDERGROUND MINING OF COAL AND COAL PREPARATION FACILITIES

Subchapter D. STRUCTURAL REQUIREMENTS FOR IMPOUNDMENTS PERFORMANCE STANDARDS

§ 89.111. Large impoundments.

* * * * *

(c) If the embankment is more than 20 feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre feet or more, [or] is located where failure could cause loss of life or serious property damage or otherwise poses a hazard to miners or the public, it shall:

(1) Be stable under all probable conditions of operation and be designed and constructed to achieve a static safety factor of 1.5, or higher if required by the Department and a seismic safety factor of at least 1.2.

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CHAPTER 90. COAL REFUSE DISPOSAL

Subchapter D. PERFORMANCE STANDARD FOR COAL REFUSE DISPOSAL

§ 90.112. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.

* * * * *

(c) If the embankment is more than 20 feet in height as measured from the upstream toe of embankment to the crest of the emergency spillway, or has a storage

volume of 20 acre feet or more, [or] is located where failure, could cause loss of life or serious property damage or otherwise poses a hazard to miners or the public, it [shall] must:

* * * * *

(2) Have an appropriate combination of principal and emergency spillways to [discharge safely the runoff from a 100-year, 24-hour precipitation event or a larger event specified and required by the Department] safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event.

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§ 90.133. Disposal of noncoal wastes.

Noncoal wastes, including, but not limited to, grease, lubricants, paints, flammable liquids, garbage and other hazardous wastes, shall be disposed of or stored temporarily in accordance with the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the regulations promulgated thereunder. Storage [shall] must be of a type that fires are prevented and that the area remains stable and suitable for reclamation and revegetation. [Waste] Noncoal waste materials [with low ignition points] including, but not limited to, wood, cloth, waste paper, oil, grease and garbage may not be deposited on or near a coal refuse disposal pile or impounding structure.

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