

**DRAFT
PROPOSED RULEMAKING**

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 B. PERMITS

**GENERAL REQUIREMENTS FOR PERMITS AND PERMIT
APPLICATIONS**

§ 86.17. Permit and reclamation fees.

- (a) A permit application for coal mining activities shall be accompanied by a check for \$250 payable to the “Commonwealth of Pennsylvania.”
- (b) A permit application for a coal preparation plant shall be accompanied by a check for \$250 payable to the “Commonwealth of Pennsylvania.”
- (c) A renewal application, whether the site has not yet been activated or where coal is being extracted, shall be accompanied by a check for \$250 payable to the “Commonwealth of Pennsylvania.” A renewal application for reclamation activities requires no application fee.
- (d) A permit application for coal refuse disposal activities shall be accompanied by a check for \$500 plus \$10 per acre for acreage in excess of 50 acres payable to the “Commonwealth of Pennsylvania.”
- (e) In addition to the bond established under § § 86.145, 86.149 and 86.150 (relating to Department responsibilities; determination of bond amount; and minimum amount), there is a \$100 per acre reclamation fee for surface mining activities except for the surface effects of underground mining. This reclamation fee may be paid as acreage within an approved surface mining permit is authorized for mining. The reclamation fee will be deposited in the Surface Mining Conservation and Reclamation Fund as a supplement to forfeited bonds. The reclamation fee shall only be used for reclaiming mining operations which have defaulted on their obligation to reclaim. **This fee shall not be required after (effective date of this rulemaking).**

SUBCHAPTER F. BONDING AND INSURANCE REQUIREMENTS

BOND FORFEITURE

§ 86.187. Use of money.

(a) Moneys received from fees, fines, penalties, bond forfeitures and other monies received under authority of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.31), and interest earned on the moneys, will be deposited in the Fund.

(1) Moneys received from the fees required by § 86.17(e) (relating to permit and reclamation fees), and interest accrued on these monies, will be used only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds, as a supplement to bond forfeiture funds.

(2) Moneys received from the forfeiture of bonds will be used only to reclaim land and restore water supplies affected by the surface mining operation upon which liability was charged on the bond, except as otherwise provided in § 86.190 (relating to sites where reclamation is unreasonable, unnecessary or impossible; excess funds). Interest accrued on these monies will be used only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds, as a supplement to bond forfeiture funds.

(3) Other moneys deposited in the Fund may be used to reclaim land affected by surface mining operations and for other conservation purposes consistent with the purposes of the Fund, including restoration of water supplies affected by surface mining operations. The Department may also use the money in the Fund, other than the monies described in paragraphs (1) and (2), for necessary administrative expenses, including the purchase, lease or rental of vehicles, equipment, office space, laboratory supplies or other supplies, materials or services and personnel and overhead expenses.

(b) The Department, **after notifying and consulting with the landowner,** will expend the funds to reclaim the land affected by the operation in such a manner as to complete the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site **or an alternative reclamation plan completed pursuant to subsection (c).** The Department[, **after notifying and consulting with the landowner,**] will expend the funds to reclaim the land affected by the operation in such a manner as to complete **an alternative** reclamation plan in compliance with subsection (c) if either of the following apply:

(1) After considering the engineering cost estimate for completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site, the Department determines that the plan may be amended to decrease the cost of reclaiming the bond forfeiture site.

(2) The Department determines that completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site is unreasonable, unnecessary or physically impossible.

(c) If the Department determines under subsection (b) that an alternative to the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site should be implemented, the Department will prepare and implement a plan **[that makes the bond forfeiture site suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation.] that complies with all applicable performance standards in accordance with §§ 86.189(c)(2), 86.189(c)(3) or 86.189(c)(4), whichever is appropriate, and that ensures that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining or higher or better uses.**

§ 86.188. Evaluation of bond forfeiture sites.

(a) After forfeiture of bond under §§ 86.180—86.182 and 86.185 (relating to scope; general; procedures; and preservation of remedies) has become final and the bond proceeds have been collected, the Department will evaluate the bond forfeiture site for reclamation purposes. The evaluation will consist of an onsite inspection by the Department and solicitation of information regarding the site and reclamation intention of the landowner and others determined by the Department to have information on, or an interest in, the site. The Department will provide to the landowner of the site, upon request, a copy of the completed site evaluation report.

(b) The Department will prioritize a bond forfeiture site according to the following categories, which are listed in decreasing order of severity of condition:

(1) Sites which present a significant and continuing hazard to human life by either their proximity to or impact on human populations.

(2) Sites which present a significant threat to health or safety, including actual or threatened loss of public or private water supplies.

(3) Sites which present a significant risk of damage to public or private property.

(4) Sites which are causing environmental degradation or pollution affecting the productive use of public or private land, or the reclamation of which would create significant environmental benefits.

[(5) Other sites which need reclamation.]

(c) The Department, in selecting sites for reclamation under § 86.189(b)(1) (relating to reclamation of bond forfeiture sites), will consider the following factors:

(1) The severity of the conditions at the site.

(2) The potential for conditions at the site to deteriorate, including environmental quality, thus increasing the hazard to life, health, safety or property.

[(3) The availability of funds to accomplish the required reclamation of the site, or that portion of the site which is threatening life, health, safety, other property or the environment.]

[(4)] **(3)** The willingness of the landowner, or other person, to undertake the reclamation of the site under § 86.189(b)(2), (3) or (4), as evidenced by previous reclamation activity performed on the site or other indications of willingness to reclaim by the landowner or other person.

[(5)] **(4)** The ability of the Department to gain adequate access to the site.

[(6)] **(5)** The potential for remaining of all or a portion of the site.

[(7)] **(6)** The lack of participation of the landowner in the surface mining activities which created the conditions at the site.

[(8)] **(7)** The potential for agricultural use or reforestation of the site.

(d) The Department will compile a list of sites for which forfeiture of bonds under § § 86.180—86.182 and 86.185 has become final and bond proceeds have been collected. The list will be updated quarterly and will be available for review in the Department's district and central offices. The Department will publish quarterly in the *Pennsylvania Bulletin* notice of the availability of this list for review.

§ 86.189. Reclamation of bond forfeiture sites.

(a) The Department will first provide for the reclamation of bond forfeiture sites where permits were issued under the Federally-approved coal surface mining regulatory program which took effect July 31, 1982, and where bonds under the permits were subsequently forfeited by the Department. After the Department provides for reclamation of these sites, the Department will provide for the reclamation of other bond forfeiture sites.

(b) The Department will provide for reclamation of bond forfeiture sites through one of the following:

(1) The Department may provide for reclamation to be conducted under the public bidding and contracting requirements of the Commonwealth under the site evaluation procedure in § 86.188 (relating to evaluation of bond forfeiture sites). Under this approach, the Department will advertise for bids for reclamation of the bond forfeiture site in a newspaper of general circulation in the locality in which the work is to take place. The advertisement will appear once a week for a minimum of 2-consecutive weeks. In advertising for bids, the Department may consider various construction methods for bidding, including the rental of equipment with equipment operators to be supervised by the Department during completion of the reclamation plan.

(2) Based on an engineering cost estimate for completing the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site, the Department may negotiate and enter into a contract with the landowner of a bond forfeiture site or another licensed mine operator to complete the reclamation of a bond forfeiture site advertised for bids under paragraph (1). The Department will give public notice of the intent to reclaim sites selected by the Department to be advertised for public bids under paragraph (1) in a newspaper of general circulation in the locality in which the work is to take place. The public notice will appear once a week for a minimum of 2 consecutive weeks and may be combined with the notice in paragraph (1). Payments to a person to whom the Department has granted a contract under this paragraph will be made to the extent of the appropriate compensation provisions according to a payment schedule to be established by the Department. The final payment will be made when the Department is satisfied that the person has completed reclamation of the site in accordance with the approved reclamation plan and as specified in the contract.

(i) The Department will compensate landowners of bond forfeiture sites at a rate equal to the lesser of one of the following:

- (A) The Department's engineering cost estimate for the site.
- (B) The prevailing bond rate.

(ii) The Department will compensate licensed mine operators at a rate equal to the lesser of one of the following:

- (A) The Department's engineering cost estimate for the site.
- (B) The prevailing bond rate.

(3) When a licensed mine operator is granted a permit or has filed a permit application on property contiguous to a property on which the Department has forfeited bonds for failure to complete the reclamation plan, the permittee shall be provided the opportunity to make a proposal to complete the reclamation plan of the bond forfeiture site developed under § 86.187 (relating to use of money).

(i) The proposal shall contain estimated costs and the necessary information upon which the Department can determine the cost effectiveness of the proposal. Upon receipt of the proposal, the Department may negotiate and enter into a contract with the permittee to complete the reclamation plan. A determination whether to negotiate will be made by the Department within 30 days of receipt of a complete proposal. Contract negotiations will begin within 30 days of the determination to negotiate.

(ii) Payments to a person with whom the Department has entered into a contract under this paragraph will be made to the extent of the appropriate compensation provisions according to a payment schedule to be established by the Department, and the final payment will be made when the Department is satisfied that the person has completed reclamation of the site in accordance with the approved reclamation plan and as specified in the contract. The Department will compensate licensed mine operators at a rate equal to the lesser of one of the following:

- (A) The Department's engineering cost estimate for the site.
- (B) The prevailing bond rate.

(4) Under cooperative agreements among the Department, the State Conservation Commission and the County Soil Conservation District in which the bond forfeiture site is located, the District may enter into a contract with the landowner of the bond forfeiture site to reclaim the site.

(i) The landowners of bond forfeiture sites will be compensated at a rate equal to the lesser of one of the following:

- (A) The Department's engineering cost estimate for the site.
- (B) The amount of the forfeited and collected bond.

(ii) The District may also compensate landowners for the reasonable cost of insurance required for landowner reclamation and the design and engineering costs incurred by the landowner in the incidental modification of the reclamation plan, subject to approval by the Department.

(c) The Department will not enter into a reclamation contract under this section with a person unless the person demonstrates the following to the satisfaction of the Department:

(1) Neither the person nor a related party has been convicted of a misdemeanor within the last 3 years for violating The Clean Streams Law (35 P. S. § § 691.1—691.1001), the Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66), the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § § 1406.1—1406.21), the Air Pollution Control Act (35 P. S. § § 4001—4015), the Solid Waste Management Act (35 P. S. § § 6018.101—6018.1003) or the Dam Safety and Encroachments Act (32 P. S. § § 693.1—693.27).

(2) For bond forfeiture sites for which permits were issued under the Federally approved surface coal mining regulatory program which took effect July 31, 1982, the proposed reclamation plan will result in reclamation of the site in a manner consistent with The Clean Streams Law and the regulations promulgated thereunder for active surface coal mining operations, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations promulgated thereunder for active surface coal mining operations [**except as provided in paragraph (5)**].

(3) For bond forfeiture sites for which the bonds were declared forfeit on or after May 3, 1978 and for which permits were not issued under the Federally-approved surface coal mining regulatory program which took effect July 31, 1982, the proposed reclamation plan will result in reclamation of the site in a manner that is consistent with the interim Federal program regulations first published at 42 FR 62639 (December 13, 1977), as well as The Clean Streams Law and the regulations promulgated thereunder in effect at the time the bonds were declared forfeit, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations promulgated thereunder in effect at the time the bonds were declared forfeit. If the Department's permit files for the site clearly show that surface mining activities on the site occurred before August 3, 1977, the proposed reclamation plan may be consistent with paragraph (4)[**except as provided in paragraph (5)**].

(4) For bond forfeiture sites for which the bonds were declared forfeit before May 3, 1978, the proposed reclamation plan will result in reclamation of the site in a manner that is consistent with The Clean Streams Law and the regulations promulgated thereunder that were applicable to active surface coal mining operations at the time the bonds were declared forfeit, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations that were promulgated thereunder at the time the bonds were declared forfeit[**except as provided in paragraph (5)**].

[(5) In lieu of relevant statutes and regulations that are specifically applicable to post mining land use, the plan for a bond forfeiture site may propose to make the site suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation under § 86.187(c).]

[(6) (5) Except in the case of a landowner of a bond forfeiture site under subsection (b)(2) and (4) the person shall demonstrate the following:

(i) Neither the person nor a related party has a legal obligation to correct the present conditions at the site.

(ii) The person meets the requirements of § 86.37(a)(8)—(11) (relating to criteria for permit approval or denial).

(d) Prior to advertising a project for bids under subsection (b)(1) or to entering into negotiations with the landowner or licensed mine operator under subsection

(b)(2), or upon receipt of an unsolicited proposed contract from a licensed mine operator under subsection (b)(3), the Department will publish notice in the *Pennsylvania Bulletin*, and notify the landowners of the bond forfeiture site proposed for reclamation, of the location of the project and a brief summary of work to be done.

(e) Upon awarding a reclamation contract under this section, the Department will notify the landowners of the bond forfeiture site proposed for reclamation of the name of the contract recipient, the location of the project, a summary of work to be done and the cost of the work and will publish a notice in the *Pennsylvania Bulletin* annually of reclamation contracts awarded under this section.

§ 86.190. Sites where reclamation is unreasonable, unnecessary or impossible; excess funds.

(a) If the Department determines in the evaluation of a bond forfeiture site that completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site or an alternative reclamation plan is unreasonable, unnecessary or physically impossible, the bond amount will be made available for expenditure from the Fund only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds. The reasons justifying this determination include[, **but are not limited to,**] the following:

(1) The site has been repermited and rebonded for mining, and reclamation of the site is a condition of the permit.

(2) The site has been otherwise reclaimed.

[(3) The landowner refuses to allow the site to be reclaimed, and the site is not a hazard to public health, safety and welfare or adjacent property.]

(b) Before a final determination under subsection (a), the Department will send written notice to the landowner of the Department's intention to remove restrictions on the expenditure of the forfeited bond amount.

(c) If the Department determines that the funds received from bonds covering the bond forfeiture site exceed the amount which is required to reclaim the bond forfeiture site, the excess funds will be made available for expenditure from the Fund only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds.

SUBCHAPTER J. REMINING AND RECLAMATION INCENTIVES

BONDING INCENTIVES

§ 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 remaining area to be affected multiplied by the Department's current applicable bond rates.

(2) The first payment is due upon receipt of notice of the Department's approval of the operator's application to participate in the program. Payments shall be made annually thereafter concurrent with the license renewal or in accordance with a schedule determined by the Department.

(3) Payments are not refundable and will be deposited into the financial guarantees special account in the Remaining Financial Assurance Fund to be used in case of operator forfeiture. When the special account becomes actuarially sound, excess payments may be used under section 18(a.1) and (a.2) of the act (52 P. S. § 1396.18(a.1) and (a.2)).

(4) The operator may not substitute financial guarantees for existing collateral or surety bonds.

(b) The operator is responsible for making the annual payment as calculated by the Department, until the amount of the bond is reduced or released in accordance with §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).

[(c) An operator approved to participate in the financial guarantees program is not required to pay the per acre reclamation fee required by § 86.17(e) (relating to permit and reclamation fees) for the remaining area.]

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

[(e)] (d) 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.

