

86.162b. Land Reclamation Financial Guarantees

(a) In the Surface Mining Conservation and Reclamation Fund there is a special account providing Land Reclamation Financial Guarantees for qualified operators. Funds in this special account may be used to financially assure bonding obligations under § 86.143 (relating to requirement to file a bond) of a qualified coal mine operator engaged in surface mining activities. The Department will designate a portion of the funds in this account to underwrite the Land Reclamation Financial Guarantees. The remainder of the funds will be held in reserve in the special account providing Land Reclamation Financial Guarantees. The purpose of the reserve is to provide funds in the event of a forfeiture and to underwrite sum-certain guarantees to cover Stage 3 reclamation liability for the remaining site under a permittee's reclamation bond for Bioenergy Crop Bonding.

(b) The Land Reclamation Financial Guarantee program is subject to the following limits:

(1) Permit Limit--The Department may not issue Land Reclamation Financial Guarantees for a permit in excess of one-half of the required bond amount for that permit.

(2) Operator limit--The Department will not issue additional Land Reclamation Financial Guarantees to a mine operator if the aggregate amount of financial guarantees on permits issued to the operator will exceed 30% (initially \$3 M) of the designated amount in the special account for Land Reclamation Financial Guarantees.

(3) Program limit--The Department will not issue additional Land Reclamation Financial Guarantees when the aggregate amount of outstanding Land Reclamation Financial Guarantees exceeds that amount resulting from dividing the current designated amount in the special account by the historical rate of bond forfeiture under § 86.181 (relating to general) with a margin of safety determined by the Department. This amount is the program limit. The initial forfeiture rate, including the margin of safety, is 10%.

(c) Any existing sum-certain financial guarantee previously issued by the department shall be converted into a Land Reclamation Financial Guarantee established by this section and the funds in the Land Reclamation Financial Guarantee Account shall be used to cover obligations for all existing sum-certain financial guarantees previously issued by the department. Permittees who exceed the limits established at subsection (b)(2) do not need to be reduced but will be ineligible for further Land Reclamation Financial guarantees until they are under the limits. Permits that exceed the limits established at subsection (b)(2) do not need to be reduced.

(d) Periodically, but no less frequently than every five years, the Department will prepare a report containing a financial analysis of the revenue and expenditures of the Land Reclamation Financial Guarantee Program. The report will evaluate the fee amount, the permit limit, the operator limit and the program limit for the Land Reclamation Financial Guarantee Program. The report will be submitted to the members of the Mining and Reclamation Advisory Board for their review and comment and will be published on the Department's web site. Notice of the report's availability will be published in the *Pennsylvania Bulletin*. The Department will review the report at a meeting of the Mining and Reclamation Advisory Board. Following the Department's review of limits at a public meeting of the Mining and Reclamation Advisory Board, if the result is a change in the permit limit, the operator limit, the program limit or fee amount, the Department will publish a notice of the changes in the *Pennsylvania Bulletin*. Changes to the program limits or fee will become effective upon publication in the *Pennsylvania Bulletin*.

(e) Interest earned and premiums collected and deposited in the Land Reclamation Financial Guarantee Account may be transferred by the department into the Reclamation Fee O & M Trust Account established pursuant to sections 86.17 and 86.18 to be used to supplement the funding of the Reclamation Fee O&M Trust Account. The Department will solicit comments from Mining and Reclamation Advisory Board prior to making the transfer.

(f) To participate in the Land Reclamation Financial Guarantee program established by this subchapter, a coal mining operator shall demonstrate that:

(1) The mine operator holds a valid coal mining license issued under section 3.1 of the act (52 P. S. § 1396.3a);

(2) The mine operator, a related party, a person who owns or controls the operator or a person who is owned or controlled by the operator, satisfies the requirements of subsections 86.37(a)(8)—(11) and (16) (relating to criteria for permit approval or denial);

(3) The mine operator's past history of compliance with environmental laws does not indicate a lack of intention or ability to comply with those laws or the regulations promulgated thereunder; and

(4) The mine operator has met its reclamation obligations and made timely payments for the remaining financial guarantee program or has made timely payments for the Land Reclamation Financial Guarantee program; or

(5) For operators who have not previously participated in the remaining financial guarantee program or the Land Reclamation Financial Guarantee program, the

operator shall demonstrate appropriate experience in coal mining and reclamation by showing that he has had a coal mining license under section 3.1 of the act (52 P. S. § 1396.3a) for five years and the operator would be able to obtain a surety bond otherwise required under this chapter by submitting:

- (i) a surety bond for a portion of the remaining reclamation liability for the proposed site, or
 - (ii) 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. The acceptance letter shall indicate the complete name and address of the surety company and state that the surety company would write the bond.
- (g) An application for a Land Reclamation Financial Guarantee shall include a description of:
- (1) The coal to be mined and the method of coal mining activities proposed.
 - (2) The environmental and safety hazards of the site for which a guarantee is proposed.
 - (3) The availability of coal reserves at the site.
- (h) Upon declaration of forfeiture, the specified amount of the Land Reclamation Financial Guarantee from the special account will be used with other bonds forfeited on the permit by the Department to complete reclamation of the mine site in accordance with the procedures and criteria in sections 86.187—86.190.
- (i) An operator's participation in the financial guarantees program is subject to the following:
- (1) Annual payments will be 1.5% of the total amount of the Land Reclamation Financial Guarantee. 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 sections 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond). The Department may adjust this annual percentage rate. Any adjustments must be noticed in the *PA Bulletin*.
 - (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 permit anniversary date or in accordance with a schedule determined by the Department.

(3) Payments are not refundable and will be deposited into the Land Reclamation Financial Guarantees special account to be used in case of mine operator forfeiture. When the special account becomes actuarially sound. Excess payments may be transferred to the Reclamation Fee O & M Trust Account consistent with section 19.2 (b)(6) of the act (52 P.S. 1396.12b(b)(6)).

(4) The operator may not substitute Land Reclamation Financial Guarantees for existing collateral or surety bonds.

(k) The Department will solicit comments from the Mining and Reclamation Advisory Board prior to making any rate adjustments under subsection (b)(1)(i) or transfers under subsection (b)(3).

(l) The obligation covered by the Land Reclamation 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, except that remaining financial guarantees will be released before Land Reclamation Financial Guarantees.

m) If a discharge not meeting the effluent criteria in sections 87.102, 88.92, 88.187, 88.292, 89.52 or 90.102 develops on a permit on which a Land Reclamation Financial Guarantee is being used, the operator shall within 90 days of receipt of written notice by the Department provide a separate bond or alternative financial assurance mechanism to cover the long-term treatment costs or replace the Land Reclamation Financial Guarantee with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge. If an acceptable post-mining treatment trust or a bond calculated to cover the long-term treatment costs 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.

(n) Upon forfeiture under section 86.181 (relating to general), the Department will declare forfeit the specified amount of the Land Reclamation Financial Guarantee for the permit in the special account in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

(o) The Department's declaration of forfeiture under this section does not excuse the operator from meeting the requirements of this chapter or other requirements under the act.

(p) Upon declaration of forfeiture, the Department will use the bond money posted by the operator and the specified amount of the Land Reclamation Financial Guarantee to complete the reclamation of the mine site in accordance with the procedures and criteria in sections 86.187—86.190.

(q) The Land Reclamation Financial Guarantees program will be discontinued immediately and notice published in the *Pennsylvania Bulletin*, if 25% or greater of the total outstanding Land Reclamation Financial Guarantees are declared forfeit. If the Land Reclamation Financial Guarantees program is discontinued, no additional Land Reclamation Financial Guarantees may be approved. Outstanding Land Reclamation Financial Guarantees will remain in effect until released under sections 86.170—86.175.

(r) The Land Reclamation Financial Guarantees program may be suspended upon notice in the *Pennsylvania Bulletin* when the number of participating permits declared forfeit is equal to that number of permits calculated by multiplying the historical rate of forfeiture plus a margin of safety times the number of permits participating in the program. No additional Land Reclamation Financial Guarantees will be approved until the total amount of Land Reclamation Financial Guarantees declared forfeit has been replaced through the accumulation of annual payments or by other means.

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