

EXECUTIVE SUMMARY
COAL MINING PROGRAM AMENDMENTS
PROPOSED RULEMAKING
25 Pa. Code, Chapters 86 -90

It is proposed to amend 25 Pa. Code §§ 86.1 (relating to definitions), 86.5 (relating to extraction of coal incidental to noncoal surface mining), 86.36 (relating to review of permit applications), 86.37 (relating to criteria for permit approval or denial), 86.62 (relating to identification of interests), 86.103 (relating to procedures), 86.129 (relating to coal exploration on areas designated as unsuitable for surface mining), 86.133 (relating to general requirements), 86.159 (relating to self-bonding), 86.165 (relating to failure to maintain a proper bond), 86.281(c), (d) and (e) (relating to financial guarantees to insure reclamation--general), 86.282 (relating to participation requirements), 86.283 (relating to procedures), 86.284 (relating to forfeiture), 87.112 (relating to hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance), 88.321 (relating to disposal of noncoal wastes), 89.111 (relating to large impoundments), 90.112 (relating to hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance) and 90.133 (relating to disposal of noncoal wastes) These amendments are being proposed for two purposes.

First, the Department is subject to oversight by the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) for its coal mining regulatory program. OSMRE has identified a number of relatively minor program deficiencies in Pennsylvania's program to regulate coal mining, most of which arise from changes that have been made to the federal mining regulations. In order to retain regulatory authority over mining in Pennsylvania, the Department's mining regulations must be as effective as the federal regulations. OSMRE has identified specific regulations which are inconsistent with or not as effective as the federal regulations, and OSMRE has required Pennsylvania to amend its mining program accordingly. The deficiencies in Pennsylvania's program that necessitate a regulatory change are included in this proposal.

Second, improvements to the Remining Financial Guarantee program are being proposed. These improvements are needed because of the transition in the coal mining bonding program from an alternate bonding system, which used acre-based bond rates, to the conventional bonding system where the bond amount is based on reclamation costs.

The following amendments address OSMRE program deficiencies. Section 86.1 will now include a citation of the Noncoal Surface Mining and Reclamation Act in the definition of "Acts" and the current reference to the federal regulation in the definition of *Owned or controlled* and *owns or controls*. Section 86.5 is being amended to clarify that interested parties will be notified upon the determination of whether or not an exemption from the reporting requirements for the extraction of coal incidental to the mining of noncoal minerals has been approved. A reference to the federal definition of violation is being added to § 86.36. Section 86.62 is being amended to include the correct reference relating to federal minimum enforcement action. Section 86.103 will now incorporate the federal procedures for processing a request for asserting Valid Existing Rights, and § 86.129 is being amended to provide procedures for processing permit applications for exploration as land designated as unsuitable for mining.

Section 86.159 will now require that bond documents be signed by two officers of a parent company in the situation where a company is self-bonded. Amendments are proposed to 25 Pa. Code §§ 87.112 and 89.111 adding the seismic safety factor for impoundment embankments. Amendments are proposed to 25 Pa. Code §§ 88.321 and 90.133 to include all noncoal wastes and apply the prohibition to impoundments. In addition, changes to 25 Pa. Code § 90.112 incorporate revised sizing criteria for spillways and for protection of the public and miners.

The following changes are being proposed to improve the Remining Financial Guarantee program. A change is being made to § 86.165 to include the failure to make required annual payments as a trigger of failure to maintain a proper bond. Section 86.281 is being amended to reflect the Department's conversion to a conventional bonding program. The language of §§ 86.281(c) and (e) is being clarified based on conventional bonding methodology.

Section 86.282 is being amended to eliminate the option of using the ability to obtain a letter of credit as a demonstration of financial responsibility. The amendment to § 86.283 is based on the fact that, under conventional bonding, bond rates are no longer calculated on an acreage basis. Section 86.283(f) is a new section. It requires that a remining financial guarantee be replaced with another financial assurance mechanism in the event that a post-mining discharge develops on a mine site bonded under the remining financial guarantee program.

Finally, revisions to 25 Pa. Code § 86.195(b), 25 Pa. Code § 86.211(d), and 25 Pa. Code § 86.281(d) are proposed to correct drafting errors. Also, 25 Pa. Code § 87.119 is being corrected to remove attorney fees and expert witness fees from the list of costs that may be recovered in order to be consistent with revisions to the Surface Mining Conservation and Reclamation Act, 52 P.S. §§ 1396.1 et seq., and The Clean Streams Law 35 P.S. §§ 691.1 et seq..