

Executive Summary

Final Rulemaking Incidental Coal Extraction, Bonding, Enforcement, Sediment Control, and Remining Financial Guarantees (25 Pa Code Chapters 86 – 90)

This final-form regulation is intended to satisfy requirements for maintaining a state primacy program under the Federal Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 et seq. 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). 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)).

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 federal regulations noting these program deficiencies provided deadlines for Pennsylvania to correct them. The deadlines are long overdue.

In addition, this regulation 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 in order 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 regulations include several minor editorial changes needed to correct spelling, spacing and punctuation errors.

Summary of Changes to the Proposed Rulemaking

In section 86.1, the definition of *Owned or controlled* and *owns or controls* is being corrected to include the reference to the term defined in federal regulations which is “own, owner, or ownership” rather than “owned or controlled and owns or controls” as was proposed. Section 86.133 (d) is being revised to clarify that the permit application for exploration on areas designated as unsuitable for mining and the documentation of the decision to approve or deny the application are available for review by the public. Sections 88.321 and 90.133 are revised to more closely reflect the federal regulation. This is accomplished by changing the phrase “on or near” to “in.” Section 90.112 (c) (2) has been revised to include the phrase “runoff from” as it relates to a storm event.

Relating to the re-mining financial guarantees, section 86.282 (a) (2) is being revised to clarify that the reclamation liability is for a proposed mining area rather than the permitted area. This change was made in response to comments. Section 86.282 (a) (3) is being added to clarify that an operator who has participated in the re-mining financial guarantee program and has met its obligations is eligible for subsequent re-mining financial guarantees.

This final rulemaking was reviewed by the MRAB on September 7, 2010. At this meeting, the MRAB unanimously recommended that the Department proceed with the final-form rulemaking.