

**NOTICE OF PROPOSED RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CHS. 86, 87, 88, 89, 90]
Federal Office of Surface Mining Reclamation and Enforcement (OSM) Program
Consistency**

The Environmental Quality Board (Board) proposes to amend the regulations at 25 Pa. Code Chapter 86 (relating to Surface and Underground Coal Mining: General), 25 Pa. Code Chapter 87 (relating to Surface Mining of Coal), 25 Pa. Code Chapter 88 (relating to Anthracite Coal), 25 Pa. Code Chapter 89 (relating to Underground Mining of Coal and Coal Preparation Facilities), and 25 Pa. Code Chapter 90 (relating to Coal Refuse Disposal), to update requirements to comply with the federal coal mining regulations at 30 CFR Parts 700 through 955 (relating to Mineral Resources), correct errors, adopt regulations consistent with statutory changes and provide for general mining program improvements.

This proposed rulemaking was adopted by the Board at its meeting of _____.

A. Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact William Allen, Bureau of Mining Programs, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5015; or Joseph Iole, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-9376. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department or DEP) web site at www.dep.state.pa.us (select: "Public Participation Center," then select "The Environmental Quality Board").

C. Statutory Authority

This proposed rulemaking is authorized 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); Section 7(b) of the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.7(b)); and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

D. Background and Purpose

This proposed rulemaking primarily addresses inconsistencies between the Commonwealth's coal mining program and federal requirements. DEP also includes in this rulemaking additional revisions to reflect general program maintenance, such as correcting typographical errors and updating organization names, statutory citations, remaining requirements, and the use of reference data for the sizing of stormwater control facilities.

Required Consistency of the Commonwealth's Mining Program with Federal Law

The Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (SMCRA) established a "nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." *See* 30 U.S.C.A. § 1202(a). SMCRA authorizes the Secretary of the Interior, through the Office of Surface Mining Reclamation and Enforcement (OSM), to administer the programs for controlling surface coal mining operations, and to review and approve or disapprove State programs for controlling the same. *See* 30 U.S.C.A. § 1211(c)(1).

SMCRA allows a state to assume jurisdiction over the regulation of surface coal mining and reclamation operations if the state can administer that program according to Federal standards. *See* 30 U.S.C.A. § 1253. When a state program is approved by OSM, the State achieves "primacy" over the regulation of its surface coal mining program. The Commonwealth achieved primacy in 1982. *See* 47 FR 33,050, 33,076 (July 30, 1982). To maintain its jurisdiction over regulation of coal surface mining activities, the Commonwealth must maintain a State program in accordance with the requirements of SMCRA, and with "rules and regulations consistent with regulations issued by the Secretary." *See* 30 U.S.C.A. § 1253(a)(1) and (7). State laws must be consistent with the provisions of SMCRA, 30 U.S.C.A. § 1255(a), and any provision of state law that provides for more stringent land use and environmental controls and regulations shall not be construed to be inconsistent with SMCRA, 30 U.S.C.A. § 1255(b). In other words, a state program must be at least as effective as the requirements in SMCRA, but may be more stringent.

Required Program Amendments

OSM has identified several of the Commonwealth's regulations that are not as effective as the federal requirements and therefore require revision. Therefore, DEP is required to revise existing regulations so that they are no less stringent than federal standards. The formal process for OSM to disapprove of regulations under Pennsylvania's program and require Pennsylvania to subsequently submit amendments for approval is outlined under 30 CFR Part 938.

Augmented Seeding

In 1993, OSM disapproved of the use of the term "augmented" in the last sentence of 25 Pa. Code § 86.151(d) because it found it to be less effective than the federal requirement. 30 CFR 938.12(d). OSM had found that its presence created the inference that there could be instances when 'augmented' seeding would not necessitate restarting of the revegetation liability period. *See* 58 FR 18154. Pennsylvania's regulation refers to seeding that OSM considers non-

augmentative normal husbandry practice that would not restart the period for which an operator is liable for revegetation of its site. According to OSM, “augmented” seeding by definition would restart the period for which an operator is liable. Therefore, the proposed rulemaking deletes the term “augmented” from 25 Pa. Code § 86.151(d) to match OSM’s understanding of seeding that does not restart the period of liability.

Bonding

OSM required the Commonwealth to revise its regulations relating to the valuation of collateral bonds at 25 Pa. Code § 86.158(b). OSM’s requirements are as follows:

(m) By November 1, 1991, Pennsylvania shall amend its rules at § 86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the value of all government securities pledged as collateral bond shall be determined using the current market value. 30 CFR 938.16 (m).

(n) By November 1, 1991, Pennsylvania shall amend § 86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture. 30 CFR 938.16 (n).

(o) By November 1, 1991, Pennsylvania shall amend § 86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements. 30 CFR 938.16(o).

30 CFR 938.16(m)-(o).

To address these issues, the proposed rulemaking includes revisions to 25 Pa. Code § 86.158(b). In subsection (b)(1), “may” is changed to “will,” requiring the Department to determine current market value. The proposed rulemaking also adds “less any legal and liquidation costs” to subsection (b)(2), and revises subsection (b)(3) to require the posting of any needed additional bond amount with the permit renewal, which is at least every five years.

Haul Roads

OSM also required that the Commonwealth revise its regulations relating to the use of public roads as part of an anthracite mining operation:

(mmm) By October 5, 1993, Pennsylvania shall submit a proposed amendment to § 88.1 to require that the definition of haul road include all roads (including public roads) that are used as an integral part of the coal mining activity and to

clarify that the area of the road includes the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches.

30 CFR 938.16(mmm).

The proposed rulemaking adds the following to the definition of a haul road at 25 Pa. Code § 88.1:

The term includes public roads that are used as an integral part of the coal mining activity.

OSM's requirement to clarify that the activity includes the right-of-way and other features of the road does not require an additional revision in the proposed rulemaking. The elements OSM requires are already included in the existing definition of "Road" at § 88.1, and the definition of "Road" includes a reference to "haul roads."

Other consistency issues

Effluent Limitations for Bituminous Underground Mines

The Commonwealth lists effluent limitations for bituminous underground mines at 25 Pa. Code § 89.52. Subsection (f) includes alternative effluent limitations for discharges that can be adequately treated using passive treatment technology. The federal effluent limit guidelines at 40 CFR Part 434 include alternative limits for passive treatment systems applicable to surface mines, but not underground mines. When the Board revised the regulations to add subsection (f), this distinction was missed. During a recent evaluation comparing the federal effluent limit guidelines with the requirements in 25 Pa. Code § 89.52, this discrepancy came to light.

Therefore, the proposed rulemaking deletes the portion of subsection (f), eliminating the alternative effluent limits for passive treatment systems for underground mines.

Temporary Cessation

The Commonwealth's regulations regarding the temporary cessation of operations for bituminous surface mines include a 180-day upper limit on the amount of time that an operation can be in temporary cessation status. The federal rules about temporary cessation at 30 CFR 816.131 do not include an upper limit on the duration of temporary cessation status. Therefore, the proposed rulemaking includes revisions to 25 Pa. Code § 87.157 (relating to Cessation of Operations: Temporary) removing the upper time limit.

Temporary cessation for anthracite coal mines is addressed at 25 Pa. Code §§ 88.131 (regarding anthracite surface mines), 88.219 (regarding anthracite bank removal), and 88.332 (regarding anthracite coal refuse disposal). Sections 88.131 and 88.219 do not include an upper time limit for temporary cessation status. Section 88.332, applicable to

anthracite coal refuse disposal, includes a 1-year upper time limit. For consistency, the proposed rulemaking revises this section to remove the upper time limit from § 88.332.

The proposed rulemaking revises each of the above provisions to include the same suite of revised requirements related to temporary cessation status, including a requirement for operators to submit information to the Department, consistent with 30 CFR 816.131, and triggers for when the status ends because of reactivation, or terminates through the permittee's failure to comply with the law, regulations, or the permit. This proposed rulemaking also requires permittees to submit a timely renewal application when applicable. Amendments included in this rulemaking do not lessen environmental protection related to surface mining because the performance standards in existing regulations focus on pollution prevention. The Department provides the same attention to sites in temporary cessation status as it does to active sites, through monthly inspections to ensure compliance with performance standards, and updates to bond amounts, as appropriate.

Definition of Surface Mining Activities

In 2007, the Environmental Hearing Board issued an adjudication which concluded that “there is no surface mining unless coal is extracted or exposed and retrieved.” *Timothy A. Keck v. DEP*, EHB Docket No. 2005-280-L (June 26, 2007). In July 2010, OSM notified the Department that it had identified this conclusion as problematic because, under federal requirements, the extraction of coal is not required to establish that surface mining is underway. *See, e.g., Amerikohl Mining Inc. v. OSMRE*, 191 IBLA 11 (August 30, 2017) (under certain circumstances, timbering on permit area amounted to surface mining activities). In response, the Department indicated that it would undertake a rulemaking change to address this issue at the next opportunity to do so.

The Department has amended the definition of “surface mining activities” under Chapters 86 and 87 in this manner before to satisfy federal concerns about the scope of Pennsylvania's definition. For instance, in 1991, OSM disapproved of Pennsylvania's proposal to amend its definition of “surface mining activities” to meet federal requirements because the proposed amendment did not make it “unequivocally clear” that any road or similar disturbance related to mining “shall be deemed a surface mining activity and will be regulated,” and therefore it was “less effective than the Federal definition of ‘surface coal mining operations’ at 30 CFR 700.5.” 56 FR 24687, 24689 (May 31, 1991). Pennsylvania subsequently corrected that inconsistency by amending the definition, 25 Pa.B. 5821 (December 15, 1995), and OSM approved the amendment, 62 FR 60619, 60170 (November 7, 1997).

As the decision by the U.S. Interior Board of Land Appeals (IBLA) in *Amerikohl* demonstrates, certain activities such as timbering may or may not be surface mining activities under particular circumstances. Pennsylvania derives no benefit from amending the definition to list specific activities that OSM determines may fall within the definition in a particular instance. Instead, it is important that the Department and operators ascertain how OSM and federal tribunals interpret the scope of ‘surface coal

mining operations’ at 30 CFR 700.5 and “surface mining activities” under 30 CFR 701.5 to determine whether a particular activity falls within the Pennsylvania’s definition, and is therefore a regulated activity. The proposed rulemaking addresses this issue by replacing the existing definition of “surface mining activities” at 25 Pa. Code §§ 86.1 and 87.1 and incorporates by reference the federal definition of “surface mining activities” from 30 CFR 701.5 (which in turn refers to “surface coal mining operations” defined at 30 CFR 700.5). This will assure absolute consistency with the federal requirements.

Civil Penalties

Section 86.193(b) requires the Department to assess a civil penalty if the penalty the Department calculates equals \$1,100 or more. Correspondingly, § 86.193(c) affords the Department discretion whether to assess a civil penalty that equals less than \$1,100. The Department derives the dollar figure based on the circumstances of the violation as described under § 86.194. The threshold dollar amount that triggers a mandatory assessment is based on the federal civil penalty program found at 30 CFR 723 (relating to Civil Penalties). The federal regulations rely on a point system reflecting the circumstances of the violation. Under the federal system, a violation that amounts to 30 points or more under the federal formula requires the assessment of a penalty, along with a table that equates the number of points to a dollar value. Periodically, the federal government revises the dollar amounts on the table, while the point threshold that triggers a mandatory penalty assessment remains fixed. Therefore, rather than including the fluctuating dollar amount from the federal table into § 86.193(b) and (c), the proposed rulemaking includes references to 30 CFR 723.12 and 723.14, so that when changes are made to the federal table, the Commonwealth’s threshold for mandating the assessment of a penalty will reflect the circumstances of the violation (i.e., the federal point trigger), not a specific dollar amount.

Administrative Requirements

Two differences between the Commonwealth’s requirements and the federal requirements came to light during the recent development of the ePermitting application for new bituminous surface mines. First, 25 Pa. Code § 86.31 requires notification by registered mail to the municipality where mining is proposed. The requirement for registered mail is not in the federal rules. Therefore, the proposed rulemaking revises 25 Pa. Code § 86.31(c)(1) to retain the notification, but to delete the registered mail requirement. In addition to consistency with the federal regulations, this proposal will allow for electronic notice in cases where it is appropriate. The proposed rulemaking also includes changing “the city borough, incorporated town or township” to “the municipality.” Second, 25 Pa. Code § 86.62(a)(3) requires the date of issuance of the Mine Safety and Health Administration Identification Number to be provided in an application. This date of issuance is unnecessary and not required under the federal rules. Therefore, this proposed rulemaking deletes the date of issuance from this subsection.

Employee Financial Interest Reporting Form

Section 86.238 lists an old OSM form number for reporting employee financial interests. The current form number is OSM Form 23. Therefore, the proposed rulemaking changes “Form 705-1” to “Form 23.”

Updates and Corrections

Recovery of Litigation costs for Water Supply Replacement Cases

The act of December 20, 2000 (P.L. 980, No. 2000-138) (27 Pa.C.S. Chapter 77 (relating to costs and fees)) introduced protections for citizens against Strategic Lawsuits Against Public Participation (SLAPP). This anti-SLAPP law also amended section 4.2(f)(5) of the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA) to remove the ability of operators to recover litigation costs for water supply replacement cases. Section 88.107 (relating to Hydrologic balance: water rights and replacement) of Title 25 of the Pennsylvania Code still includes “attorney fees and expert witness fees” in the description of the items for which operators may recover costs. This proposed rulemaking deletes this phrase to reflect the 2000 amendment to PA SMCRA.

Storm Events

Sections 87.103, 88.93, 88.188, 88.293 and 89.53 each include a table of data representing the amount of precipitation for a 10-year, 24-hour storm event on a county-by-county basis. Section 90.103 includes tables of similar data representing the 1-year and 10-year rainfall events. The Department derived the data in these tables from the climatological data available in the early 1980s. At that time, data was available for a limited number of stations in each county. The regulations include the highest value in this data for each county. In subsequent years, additional data has been gathered and the National Oceanic and Atmospheric Administration (NOAA) has developed an online tool which provides the precipitation amount for various storm events for any location in the Commonwealth, currently available through the following link:
<https://hdsc.nws.noaa.gov/hdsc/pfds/>.

Generally, the amount of precipitation for each storm event is lower than what is currently listed in the tables in the regulations. Therefore, in many cases, stormwater control facilities are over-designed and require unnecessary earth disturbance. This proposed rulemaking removes the tables and replaces them with a general reference to data available through NOAA or an equivalent resource. This will result in properly-sized stormwater controls and reduced costs for mine operators.

Remining Financial Guarantees

The Department identified and established best practices for managing accounts in the Remining Financial Guarantee (RFG) Program, similar to those established for the Land

Reclamation Financial Guarantee Program. To provide stability to the RFG Program, the first best practice designates a monetary threshold and a reserve in the account. The designated threshold establishes the program limits. The reserve provides funds to pay for costs incurred when the financial guarantee program is used for land reclamation.

This proposed rulemaking includes an addition to § 86.281(b) to describe the process used to determine the amount of an individual remaining financial guarantee. This proposed rulemaking also includes revisions to § 86.281(c) to clarify that the designated amount is maintained at the program level rather than on a permit-by-permit basis, § 86.281(d) to refer to the designated amount when describing the permit limit, the operator limit, and the program limit, and § 86.281(f) to describe the reserve.

An additional best practice targets risk management. For example, one method to manage risk includes limiting the participation of operators who previously failed to make the required payments on a timely basis. This proposed rulemaking revises § 86.282(a)(4) to add that to participate, the operator cannot have been previously issued a notice of violation relating to maintaining bonds, including a missing or late payment. The requirement includes a three-year window so as not to permanently prohibit participation for an operator who submitted a missing or late payment.

The existing regulatory language at § 86.284(d) (relating to forfeiture) differs from the statutory language in section 4.12 of PA SMCRA, 52 P.S. § 1396.4(d) which has resulted in confusion when interpreting the requirement. The proposed rulemaking revises § 86.284(d) to read the same as SMCRA.

Natural Resources Conservation Service

The existing regulations include numerous references to the Soil Conservation Service. This agency changed its name to the Natural Resources Conservation Service. Therefore, the proposed rulemaking corrects these references.

Conservation District

Section 86.189(b)(4) includes a reference to the Soil Conservation District. The current name of the agency to which this refers is the Conservation District. Therefore, this proposed rulemaking makes this revision.

Chapter 92a

The existing regulations include references to Chapter 92. In 2010, the Board reserved Chapter 92 and replaced it with Chapter 92a. This proposed rulemaking corrects these references throughout Chapters 86-90.

Department Reference

Section 86.232 includes a reference to the Department of Environmental Resources. The proposed rulemaking updates this reference to be the Department of Environmental Protection.

Chapter 96

In 2000, the Board finalized Chapter 96 (relating to Water Quality Standards Implementation). The mining regulations have not been updated to include reference to Chapter 96. The proposed rulemaking corrects this by including references to Chapter 96 in §§ 87.102, 88.92, 88.187, 88.292 (relating to Hydrologic balance: effluent standards), 89.52 (relating to Water quality standards, effluent limitations and best management practices) and 90.102 (relating to Hydrologic balance: water quality standards, effluent limitations and best management practices).

Coal Ash and Biosolids

Section 86.54 includes the terms “fly ash disposal” and “sewage sludge.” Section 87.100 also uses the terms “fly ash” and “sewage sludge.” The correct term instead of fly ash is “coal ash,” which is defined at 25 Pa. Code § 287.1 (relating to definitions). This definition of coal ash includes fly ash and other materials. In addition, disposal of coal ash is not allowed in the context of active mining sites. Coal ash may be beneficially used to enhance reclamation under Chapter 290 (relating to Beneficial Use of Coal Ash). Similarly, biosolids is a term which includes reference to sewage sludge, so it is more appropriate to use. Therefore, this proposed rulemaking revises §§ 86.54 and 87.100 to correct these terms to instead refer to “coal ash” and “biosolids”.

Anthracite Mine Operators Emergency Bond Fund

In 1992, section 4.7 of PA SMCRA, 52 P.S. § 1396.4g, was revised to allow anthracite surface mining operators to participate in the Anthracite Mine Operators Emergency Bond program. Prior to this, participation was limited to deep mine operators. This proposed rulemaking changes the references to “deep mine” to be “mine” in 25 Pa. Code § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund). This clarifies that not only deep mines are eligible to participate in the Anthracite Mine Operators Emergency Bond program.

Coal Refuse Disposal Site Selection

In 2010, section 4.1 of the Coal Refuse Disposal Control Act, 52 P.S. § 30.54a was amended to add to the list of preferred sites for siting coal refuse disposal facilities. The amendment added the following:

An area adjacent to or an expansion of an existing coal refuse disposal site.

This proposed rulemaking reflects this statutory change.

Corrections

Section 86.51

Section 86.51 (relating to reviews of active permits) includes the phrase "...a review of the permit shall be no less frequent than the permit midterm of every 5 years, whichever is more frequent." The "of" underlined above should be "or." This proposed rulemaking corrects this error.

Mine Safety and Health Administration

Section 86.84 (relating to Applications for assistance) includes a reference to the Mining Enforcement and Safety Administration. The reference should be the Mine Safety and Health Administration. This proposed rulemaking corrects this error.

Section 88.1

The definition of "road" at § 88.1 begins with "A surface right-of-way for purposes of travel by land vehicles used in coal exploration of surface coal mining and reclamation operations." The "of" underlined above should be "or." This proposed rulemaking corrects this error.

Remining Program

After the Board finalized remining regulations in October 2016, discrepancies in the citations were identified in Chapter 88. In § 88.502 (relating to definitions) subsection (ii), the citation to § 88.295(b)-(g) is incorrect. The correct citation is § 88.295 (b)-(i). Similarly, in § 88.507(c) (relating to treatment of discharges) the citations are incomplete. The correct citations are §§ 88.95(b)-(g), 88.190(b)-(g) and 88.295(b)-(i). Finally, § 88.508 (relating to Request for bond release) lists "Section 86.172(a), (b) and (d)." Section 90.308 also refers to § 87.172(d). There is no subsection 86.172(d). This proposed rulemaking includes revisions to address each of these errors.

Mining and Reclamation Advisory Board Collaboration

The Department collaborated with the Mining and Reclamation Advisory Board's (MRAB) Regulation, Legislation and Technical (RLT) committee to develop this proposed rulemaking. This included discussion at several RLT committee meetings and with the full board.

The Department specifically solicited a recommendation from the MRAB about the revision to the definition of “surface mining activities” in §§ 86.1 and 87.1. Two alternatives were discussed. One alternative added elements of the definition at 30 CFR 701.5 to the existing definition (for example, excavation for the purpose of obtaining the coal) and added a reference to this definition. The other alternative was to delete the existing definition and replace it with the reference to the federal definition. The MRAB recommended the second alternative be included in the proposed rulemaking. The MRAB requested clarification regarding activities related to timbering included in the federal surface mining definition. DEP committed to collaborating with the MRAB RLT to develop guidance that details how this will be applied in Pennsylvania.

At its April 6, 2017, meeting, the MRAB voted to concur with DEP’s recommendation that the proposed rulemaking move forward in the regulatory process.

E. Summary of Proposed Regulatory Requirements

§ 86.1 Definitions

The proposed amendment replaces the definition of “Surface mining activities” and incorporates by reference the same term at 30 CFR 701.5.

§ 86.31 Public notices of filing of permit applications

The proposed amendments delete the requirement to notify the municipality by registered mail and to replace “the city, borough, incorporated town or township” with “municipality.”

§ 86.51 Reviews of active permits

The proposed amendment changes “of” to “or.”

§ 86.54 Public notice of permit revision

The proposed amendments change “fly ash disposal” to “beneficial use of coal ash” and to change “sewage sludge” to “biosolids.”

§ 86.62 Identification of interests

The proposed amendment deletes the requirement to provide the date of issuance of the MSHA identification number.

§ 86.84 Applications for assistance

The proposed amendment changes the “Mining Enforcement and Safety Administration” to the “Mine Safety and Health Administration.”

§ 86.151 Period of liability

The proposed amendment deletes the work “augmented” in subsection (d) is as it modifies seeding.

§ 86.158 Special terms and conditions for collateral bonds

The proposed amendments change “may” to “will” under subsection (b)(1), add “less any legal and liquidation costs” to subsection (b)(2), and add “at a minimum, the Department shall require any additional amounts with each permit renewal” to subsection (b)(3).

§ 86.162a Anthracite Deep Mine Operators Bond Fund

The proposed amendments delete “Deep” from the title of this section, deletes “deep” twice each from subsections (a) and (b), and corrects the name of the fund used to manage the program used in subsection (d).

§ 86.189 Reclamation of bond forfeiture sites

The proposed amendment revises subsection(b)(4) to change “Soil Conservation District” to “Conservation District.”

§ 86.193 Assessment of penalty

The proposed amendment revises subsections (b) and (c) to incorporate elements of the federal rule at 30 CFR 723.12 and 723.14.

§ 86.232 Definitions

The proposed amendment changes “Department of Environmental Resources” to “Department of Environmental Protection.”

§ 86.238 What to report

The proposed amendment changes “Form 705-1” to “Form 23.”

§ 86.281 Financial guarantees to insure reclamation-general

The proposed amendment adds to subsection (b): “The amount will be the estimated cost for the Department to reclaim the remaining area, subject to the limitations established in subsection (d).”; deletes from subsection (c): “For each approved permit of an eligible operator for a remaining area” and “The specific amount designated will be the estimated cost for the Department to reclaim the remaining area.”; adds to subsection (d) “designated” in three locations; and adds subsection (f) to identify the reserve in the Remaining Financial Assurance Fund and to describe the use of the reserved funds.

§ 86.282 Participation requirements

The proposed amendment adds to subsection (a)(4) the eligibility requirements for remining financial guarantees the requirement to not have been cited for a violation under the regulations for maintaining proper bonds.

§ 86.284 Forfeiture

The proposed amendment revises subsection (d) to match the statutory language from SMCRA relating to the discontinuance of the Remining Financial Guarantee program based on the number of forfeitures.

§ 87.1 Definitions

The proposed amendment replaces the definition of “Surface mining activities” and incorporates by reference the same term at 30 CFR 701.5.

§ 87.100 Topsoil: nutrients and soil amendments

The proposed amendment revises subsection (d) to change “fly ash” to “coal ash” and “sewage sludge” to “biosolids.”

§ 87.157, 88.131, 88.219 and 88.332 Cessation of operations: temporary

The proposed amendments delete from Sections 87.157 and 88.332 the upper time limit on the length of temporary cessation status. The other sections do not currently have an upper time limit. The proposed amendments revise all sections to include the same requirements to qualify for, hold, and terminate temporary cessation status, including the information required to be provided in the notice of cessation to the Department, a requirement to submit a timely renewal application as needed, a description of how cessation ends, and specifications for when cessation terminates.

§ 88.1 Definitions

To comply with the program amendment required by OSM at 30 CFR 938.16(mmm), this proposed amendment adds to the definition of “Haul road”: “The term includes public roads that are used as an integral part of the coal mining activity.”; and revises the definition of “Road” to change “of” to “or.”

§ 88.107 Hydrologic balance: water rights and replacement

The proposed amendment deletes from Section 88.107(g): “attorney and expert witness fees.”

§ 88.502 Definitions

The proposed amendment revises the definition of “Encountered discharge” to correct the citation to § 88.295 (b)-(i).

§ 88.507 Treatment of discharges

The proposed amendment revises Section 88.507 correct three citations.

§ 88.508 Request for bond release

The proposed amendment deletes from Section 88.508 the reference to § 86.172(d).

§ 89.52 Water quality standards, effluent limitations and best management practices

The proposed amendments delete from Section 89.52 (f)(2) the statements in the main paragraph referring to passive treatment and subsections (i)-(iii); deletes from paragraph (3) the subparagraph about iron reduction, retaining the requirement for alkalinity to exceed acidity.

§ 90.201 Definitions

The proposed amendment adds to the definition of “Preferred site” a sixth category: an area adjacent to or an expansion of an existing coal refuse disposal site.

§ 90.308 Request for bond release

The proposed amendment deletes from Section 90.308 the reference to § 86.172(d).

Precipitation events

The proposed amendments delete the table of values for each county for the storm events and revise the regulations to include a reference to NOAA or equivalent data sources in the following sections:

§ 87.103	Precipitation event exemption
§ 88.93	Hydrologic balance: precipitation event exemption
§ 88.188	Hydrologic balance: precipitation event exemption
§ 88.293	Hydrologic balance: precipitation event exemption
§ 89.53	Precipitation event exemption
§ 90.103	Precipitation event exemption

Natural Resources Conservation Service

The proposed amendments to following sections include one or more corrections of “Soil” Conservation Service to “Natural Resources” Conservation Service:

§ 87.53	Prime farmland investigation
§ 87.112	Hydrologic balance: dams, ponds, embankments and impoundments-design, construction and maintenance

§ 87.155	Revegetation: standards for successful revegetation
§ 87.177	Prime farmland: special requirements
§ 87.181	Prime farmland: revegetation
§ 88.32	Prime farmland investigation
§ 88.102	Hydrologic balance: dams, ponds, embankments and impoundments-design, construction and maintenance
§ 88.103	Hydrologic balance: coal processing waste dams and embankments
§ 88.129	Revegetation: standards for successful revegetation
§ 88.193	Hydrologic balance: collection ponds within disturbed areas
§ 88.197	Hydrologic balance: dams, ponds, embankments and impoundments-design, construction and maintenance
§ 88.198	Hydrologic balance: coal processing waste dams and embankments
§ 88.217	Revegetation: standards for successful revegetation
§ 88.302	Hydrologic balance: dams, ponds, embankments and impoundments-design, construction and maintenance
§ 88.303	Hydrologic balance: coal processing waste dams and embankments
§ 88.330	Revegetation: standards for successful revegetation
§ 88.491	Minimum requirements for information on environmental resources
§ 88.493	Minimum environmental protection performance standards
§ 89.86	Revegetation
§ 89.112	Impoundments
§ 89.121	Prime farmland investigation
§ 89.122	Prime farmlands
§ 89.134	Revegetation
§ 90.22	Prime farmland investigation
§ 90.122	Hydrologic balance: dams, ponds, embankments and impoundments-design, construction and maintenance
§ 90.113	Hydrologic balance: coal processing waste dams and embankments
§ 90.159	Revegetation: standards for successful revegetation
§ 90.161	Prime farmland: special requirements
§ 90.165	Prime farmland: revegetation

Chapter 96 reference

The proposed amendments revise following sections to add references to Chapter 96:

§ 87.102	Effluent standards
§ 88.92	Hydrologic balance: effluent standards
§ 88.187	Hydrologic balance: effluent standards
§ 88.292	Hydrologic balance: effluent standards
§ 89.52	Water quality standards, effluent limitations and best management practices
§ 90.102	Hydrologic balance: water quality standards, effluent limitations and best management practices

Chapter 92a reference

The proposed amendments revise the following sections to update references to Chapter 92a:

§ 87.117	Hydrologic balance: surface water monitoring
§ 88.106	Hydrologic balance: surface water monitoring
§ 88.202	Hydrologic balance: surface water monitoring
§ 88.306	Hydrologic balance: surface water monitoring
§ 89.59	Surface water and groundwater monitoring
§ 90.116	Hydrologic balance: surface water monitoring

F. Benefits, Costs and Compliance

Benefits

The revisions in this proposed rulemaking will resolve inconsistencies with federal requirements, allow the Commonwealth to maintain program primacy, provide clarity to mine operators regarding compliance standards, and result in properly-sized stormwater facilities. In some cases, the latter benefit will result in reduced costs because current regulations may require larger facilities than necessary.

Compliance costs

The proposed rulemaking is likely to reduce costs. None of the new or revised requirements are likely to increase costs.

Compliance Assistance Plan

Compliance assistance for this rulemaking will be provided through the Department's routine interaction with trade groups and individual applicants. There are about 400 licensed surface coal mining operators in Pennsylvania, most of which are small businesses that will be subject to this regulation.

Paperwork requirements

This rulemaking does not require additional paperwork.

G. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with

greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking has minimal impact on pollution prevention since it is predominantly focused on updating regulations to reflect current federal requirements, amendments to state statutes, and references to citations, names and data sources.

H. *Sunset Review*

The Board is not proposing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on **DATE**, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. 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 rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

J. *Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by DATE. Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

Patrick McDonnell
Chairperson
Environmental Quality Board