Regulatory Analysis Form

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REVIEW COMMISSION

(1) Agency

Environmental Protection

(2) I.D. Number (Governor's Office Use)

7-352

IRRC Number: 2123

(3) Short Title

Coal Refuse Disposal

(4) PA Code Cite

25 Pa. Code Chapters 88 & 90

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sharon Freeman, 783-1303

Secondary Contact: Barbara Sexton, 783-1303

(6) Type of Rulemaking (Check One)

_X_ Proposed Rulemaking
____ Final Order Adopting Regulation
____ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

_X_ No
___ Yes: By the Attorney General
___ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed language will serve to update 25 Pa. Code Chapters 90 and 88 by incorporating changes to the Coal Refuse Disposal Control Act (CRDCA) as amended by Act 114 of 1994. The rulemaking therefore includes regulations that address: siting of coal refuse disposal operations on land previously disturbed by coal mining activities, authorizing the issuance of modified permits for coal refuse disposal on areas with preexisting discharges, establishing a robust site-selection process to steer operators to preferred coal refuse disposal sites, and granting variances for coal refuse disposal within 100 feet of a stream in certain circumstances.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Coal Refuse Disposal Control Act (52 P.S. §§ 30.51 et seq.), Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20), the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1 et seq.).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The rulemaking integrates the 1994 CRDCA amendments into 25 Pa. Code Chapters 90 and 88. CRDCA was amended by Act 114 of 1994 and signed into law by the governor on December 7, 1994. The amended act became effective on February 5, 1995. In addition, the rulemaking includes provisions required by the Federal Office of Surface Mining when it conditionally approved the statutory amendments.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulations serve to clarify the 1994 changes to the statute and act as a template for the Department's day-to-day regulatory obligations under CRDCA. The regulations provide a mechanism for the establishment of water quality standards needed to implement section 6.2 of CRCDA and provide a procedure for granting variances to the 100-foot stream buffer zone currently in the regulations.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

CRDCA, the enabling statute, has been amended and the proposed language is needed to ensure uniform implementation of, and compliance with, the statute. The regulations will result in the improvement of water quality in streams that now receive pollutional discharge and in increased reclamation of abandoned mine lands. The regulations promote: backfilling of open cuts, elimination of unsafe highwalls, and installation of erosion and sedimentation control features. The rulemaking will, therefore, lessen risks to public health and safety, and improve the environment.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Act 114 was self-implementing; therefore, the regulated community has been complying with its requirements since 1994. This rulemaking benefits the regulated community, DEP staff, and the public by providing a more detailed outline of the Department's requirements under Act 114. This clarification of Act 114 directly benefits approximately 26 coal refuse disposal site operators who are potential applicants for coal refuse disposal permits. Operators also benefit from the Act's incentives for using sites with existing pollutive discharges and by its provisions allowing the use of experimental practices that encourage advances in coal refuse disposal technology. This rulemaking furthers the stated mission of the Act 114 amendments by promoting the reuse of previously affected areas for coal refuse disposal, minimizing the number of coal refuse sites, and providing incentives for reusing sites with existing discharges.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

The revisions are not expected to have any adverse impacts upon the regulated community or the public. Act 114 steers applicants to certain "preferred" coal refuse sites and, therefore, may limit site options or increase documentation required of applicants proposing to use alternative sites. Act 114 also requires coal refuse sites to include systems to prevent adverse groundwater and surface water impacts and systems to prevent precipitation from contacting the refuse. However, these requirements have been in place since Act 114 took effect in 1995. The proposed rulemaking essentially codifies the self-implementing provisions of Act 114.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

A minimal number (5-10) of new coal refuse disposal site applications are anticipated to be received over the next 20 years. This is based on current disposal site capacity, coal production, and discussions with operators regarding their permitting needs and plans.

(16) Describe the communications with and inputs from the public in the development and drafting of the regulation. List the persons and/or groups who where involved, if applicable.

The proposed rulemaking package has been prepared with input from the Mining and Reclamation Advisory Board. In 1998, the Department developed a technical guidance document in support of the Act 114 amendments. Comments received during the development of that technical guidance were considered in the drafting of this proposed rulemaking. Input was received from OSM, the U.S. Fish and Wildlife Service, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, U.S. EPA and the regulated community.

(17) Provide a specific estimate of the cost and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Act 114 of 1994 was self-implementing; therefore, the regulated community will not realize any new costs or savings due to this proposed rulemaking. The site-selection provisions of the statute have been fully implemented for several years, supported by a customized technical guidance document (estimated costs regarding site selection evaluation are on the order of $50,000-$70,000 per site). Under Act 114, where an operator proposes to engage in coal refuse disposal activities on an area with a preexisting discharge, the applicant bears additional information requirements regarding background monitoring. Essentially, six additional samples, with flow data, are needed to characterize existing discharges. Costs for additional sampling would be less than $500/discharge based on a cost of $25/sample for six additional samples and for labor costs associated with the required flow monitoring.

(17) CONTINUED

The stream barrier variance provisions of Act 114 and the proposed regulations enable operators to develop larger coal refuse disposal sites. This promotes a limited number of large facilities while reducing the design and permitting costs associated with multiple, small sites.

The experimental permit provisions of the proposed rulemaking will enable operators to develop more cost effective coal refuse disposal methods.

The Act 114 amendments added a new requirement to include systems to limit groundwater and surface water recharge to coal refuse piles. The proposed rulemaking does not add new requirements beyond the statutory requirements and does not prescribe the types of systems to be incorporated. However, the costs of designing and installing systems at large coal refuse disposal sites may be substantial.

(18) Provide a specific estimate of the cost and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There will be no costs or savings to local governments associated with the proposed rulemaking.

(19) Provide a specific estimate of the cost and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

The proposed regulation is driven by 1994 amendments to the CRDCA. The regulations will not place additional costs on state government above and beyond those associated with the five-year old statute. The minimal number of applications has allowed existing permitting staff to absorb the work.

Subchapter F amendments will serve to implement Section 6.2 of CRDCA. These provisions are intended to encourage the use and reclamation of areas previously affected by mining. Sites reclaimed by operators as a result of Subchapter F incentives will reduce the state's abandoned mine reclamation obligation.

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(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	$	$	$	$	$	$
Regulated Community	---	---	---	---	---	---
Local Government	---	---	---	---	---	---
State Governments	---	---	---	---	---	---
Total Savings	---	---	---	---	---	---
COSTS:*						
Regulated Community	$30,000	$30,000	$30,000	$30,000	$30,000	$30,000
Local Government	---	---	---	---	---	---
State Governments	---	---	---	---	---	---
Total Cost	$30,000	$30,000	$30,000	$30,000	$30,000	$30,000
REVENUE LOSSES:						
Regulated Community	---	---	---	---	---	---
Local Government	---	---	---	---	---	---
State Governments	---	---	---	---	---	---
Total Revenue Losses	---	---	---	---	---	---

(20a) Explain how the cost estimates listed above were derived.

Costs to regulated community - contacts were made with coal operators and consultants to determine the number of expected applications and to assess costs of preparing the site selection* evaluation.

Number of expected applications over six-year period = 3
Cost/application for site selection evaluation = $60,000
Total cost to regulated community over six years = $180,000

If an operator chooses to take advantage of the remining incentives under the proposed Subchapter F, then he or she will incur an additional cost per discharge relating to the expanded monitoring requirements for preexisting discharges. It is estimated that the additional cost of characterizing preexisting discharges will be less than $500/discharge. The total costs will be related to the number of discharges.

* Site selection characterization costs have been in place since enactment of the Act 114 amendments in 1995. The proposed rulemaking will add no additional costs related to subchapter E. (See response to item 19.) Additional, and potentially substantial costs, result from the Act 114 requirement to incorporate groundwater and surface water protection systems and systems to prevent precipitation from contacting the refuse. Act 114 and the proposed regulations are non-prescriptive regarding the type of systems to be used; therefore, specific costs have not been estimated. The proposed regulations do not add new costs related to these systems.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Mining - federal OSM portion	$10,631,000	$10,396,000	$10,811,000	$10,400,000
State matching expenditures	$10,763,000	$12,148,000	$12,694,000	$10,400,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and cost.

These proposed regulations should result in substantial benefits to the Commonwealth. Although these costs and benefits cannot be calculated with precision, the Department has developed some estimates that provide a means of gauging the significance of these regulations. The site selection provisions of the proposed regulations are designed to steer potential coal refuse site operators to previously disturbed areas. The regulations help to ensure the health and safety of the citizens of Pennsylvania's coal fields by providing incentives for the reuse of previously affected areas for coal refuse disposal, thereby minimizing the total number of disposal sites.

Prior to the Act 114 amendments to CRDCA, operators were exposed to potentially unlimited liability concerning post-disposal treatment of any preexisting discharges that would remain after disposal was complete. This potential liability discouraged operators from re-entering sites and thus limited the amount of operator driven reclamation. The proposed Subchapter F (relating to activities on areas with preexisting discharges) will impose no new costs on private entities. This is because the proposed regulation merely creates an option for operators to use if they so choose. If they choose to use the proposed regulation, the operators will bear slightly higher costs in preparing permit applications than they would incur for other permit applications. The higher costs will be related to the development of abatement plans, as well as implementation of the abatement plans and certification of completion of such plans. Costs will vary based on the number of discharges and the degree of pollution at the site as well as the technology needed to achieve a predicted improvement. The regulation will be used where operators perceive that the economic benefits of coal refuse disposal outweigh the additional costs required to characterize the preexisting discharges.

The site selection provisions of Act 114 were self-implementing; therefore, the regulated industry has been living with the requirements since the statute was enacted in 1995. The additional up-front site characterization and alternatives analysis required by the act and the proposed regulations can result in significant costs to the operator ($50,000-$70,000) per site.

The benefits of the proposed regulations outweigh the costs for two reasons. First, the proposed regulation presents the operator with an option. No operator will use the Subchapter F option unless the operator is convinced that he can conduct coal refuse disposal activities on the site and obtain release of bond with the procedure. In addition the proposed regulation will result in a reduction of water pollution from areas that have been previously mined, lead to additional reclamation of areas that have been previously mined, and benefit the Commonwealth and landowners by promoting the reuse of previously disturbed areas as opposed to virgin sites.

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(22) Describe the nonregulatory alternative considered and the cost associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered. The need to promulgate regulations is driven by amendments to Pennsylvania law. The regulations are needed to support the statute and to consolidate and clarify requirements currently scattered among the statute, existing regulations, and an existing technical guidance document relating to site selection. The regulations are also needed to address conditions required by OSM when it approved the statutory amendments.

(23) Describe alternative regulatory schemes considered and the cost associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered. (See item 22 above.)

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The proposed regulations will serve to clarify and implement the provisions of Act 114 of 1994 which amended CRDCA. Act 114 contains some provisions, such as site selection, for which there are no federal counterparts. The General Assembly, in passing Act 114, determined that there was a compelling interest to: provide incentives for coal refuse disposal activities on affected areas; have a few large coal refuse disposal sites as opposed to numerous small sites; protect aquatic and terrestrial wildlife and their habitats during site selection and operation; and require upgraded surface water and groundwater management systems at coal refuse disposal sites.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The General Assembly of Pennsylvania determined that there was a compelling need to amend the CRDCA to promote the siting of coal refuse disposal activities on previously mined areas and to require alternatives analyses of potential sites to ensure that the most suitable site is selected. The proposed regulations primarily serve to update Chapters 88 and 90 to conform with the statutory changes. Regardless, all states are subject to the same federal standards covering permitting and siting of coal refuse facilities. No state can promulgate regulations that are less stringent than the federal requirements.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The proposed regulation will not affect existing or proposed regulations of other state agencies but will modify existing DEP regulations to be consistent with CRDCA.

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(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department has recommended that the Environmental Quality Board conduct two hearings (one in the bituminous coal fields and one in the anthracite coal fields) to solicit comments regarding the rulemaking. Dates, times and precise locations have yet to be determined.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Act 114 of 1994 was self-implementing; therefore, the reporting and record keeping have been absorbed into the regulatory program over the past five years. Also, the minimal number of expected future disposal sites will add little additional paperwork requirements. The proposed regulations do not impose additional reporting requirements on the regulated community.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The anticipated effective date of the regulation is September 29, 2001. The regulated community has been complying with the amended statute for five years; compliance with the proposed regulations will be required upon notice of final rulemaking in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The proposed regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

UL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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l and legality. Attorney General

(DEPUTY ATTORNEY GENERAL)

MAY 1 1 2000
DATE OF APPROVAL

heck if applicable
opy not approved. Objections
ttached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-352

DATE OF ADOPTION:

BY:

TITLE: JAMES M. SEIF, CHAIRMAN
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: R. E. Grimaldi

4/21/00
DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF
PROPOSED RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Coal Refuse Disposal

25 Pa. Code Chapters 88 & 90

Title 25 – ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 88 AND 90]
Coal Refuse Disposal

Preamble

The Environmental Quality Board (Board) proposes to amend Chapters 88 and 90 (relating to anthracite coal and coal refuse disposal). The amendments address permitting and performance standards for coal refuse disposal operations.

This proposal was adopted by the Board at its meeting of April 18, 2000.

A. Effective Date

These proposed amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Evan T. Shuster, Chief, Division of Permits, Bureau of Mining and Reclamation, P.O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103, or Joseph Pizarchik, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-984 (TDD users) or (800) 654-5988 voice (users). This rulemaking is available electronically through the Department of Environmental Protection's (Department) Web site (http://www.dep.state.pa.us).

C. Statutory Authority

The amendments are proposed under the authority of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P.S. § 1396.4b(a)); the Coal Refuse Disposal Control Act (CRDCA) (52 P.S. § 30.53b); and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

D. Background and Purpose

The proposed rulemaking is necessary to update Chapters 88 and 90 to bring them into conformance with CRDCA as amended by Act 114 of 1994. Act 114 was signed into law on December 7, 1994 and became effective on February 5, 1995.

Subsequent to Act 114 becoming law, the Department developed a supporting technical guidance document, titled "Coal Refuse Disposal – Site Selection." The technical guidance

document clarifies the Act 114 site selection process and outlines information needed to apply for, and receive, a stream barrier variance under Section 6.1 of CRDCA. The technical guidance document was circulated for comment to the regulated community, Pa. Fish and Boat Commission, Pa. Game Commission, the federal Office of Surface Mining (OSM), U.S. EPA, U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers. On April 22, 1998 OSM published a conditional approval of the Act 114 amendments in the *Federal Register* (Vol. 63, No. 77, April 22, 1998). The published approval also recognized that the Department's technical guidance document had satisfied the concerns of the U.S. Fish and Wildlife Service regarding compliance with Section 7 of the Endangered Species Act. On May 2, 1998 the Department submitted a letter to OSM outlining its approach to addressing the required conditions through rulemaking. The proposed regulations include those clarifications.

This proposal relates to permitting and performance standards for coal refuse disposal operations. It contains new provisions for a mandatory pre-application site selection process; criteria for design and performance of groundwater and surface water protection systems; criteria relating to the design and performance of systems that prevent precipitation from contacting coal refuse; criteria relating to stream buffer zone variances; and requirements relating to experimental practices.

Additionally, it provides the regulatory language needed to implement Section 6.2 of CRDCA. CRDCA postponed implementation of the Section 6.2 provisions pending the promulgation of regulations governing the use of sites with preexisting pollutional discharges. This proposed language is intended to promote the use and reclamation of sites that were previously impacted by mining.

This proposal amends § 90.12 (Geology) to request geologic information that is needed to review a permit application for coal refuse disposal activities. The proposal adds language to §90.13 (Groundwater information) regarding groundwater flow as it relates to groundwater and surface water protection, and language describing requirements relating to preventing precipitation from contacting the coal refuse during temporary cessation.

In addition to the Act 114 provisions, § 90.116a includes a cross-reference to the water supply replacement provisions of the current surface mining regulations (Chapter 87). The proposed regulation clarifies that coal refuse disposal site operators are required to replace water supplies that are impacted by their operations.

These proposed regulatory changes were reviewed and discussed with the Mining and Reclamation Advisory Board (MRAB). The MRAB is the Department's advisory body for regulations pertaining to surface coal mining, including coal refuse disposal. A draft of the proposed rulemaking was reviewed and discussed with the MRAB's Regulation, Legislation and Technical Committee on November 17, 1999. The MRAB concurred with the proposed rulemaking at its meeting on January 6, 2000.

E. Summary of Regulatory Requirements

As indicated in Section D of this Preamble, these proposed changes are primarily the result of amendments to CRDCA. The following summary identifies the section of the regulations proposed for change or addition along with a description of the specific change.

§ 90.1 Definitions

A definition of "public recreational impoundment" is added. The proposed definition is based on Section 3 of CRDCA. Under CRDCA, watersheds that are less than four square miles in area and that drain to a point on a stream coinciding with the upstream limit of a public recreational impoundment cannot be approved for coal refuse disposal unless the site proposed is a preferred site.

§ 90.5 Site Selection and Permitting, and § 88.281 Requirements

The proposed sections reflect Section 4.1 of CRDCA, which outlines a comparative analysis process for evaluating potential sites for coal refuse disposal. CRDCA and the proposed regulations establish a two-step process for the permitting of coal refuse disposal sites. The first step is a pre-application site selection process intended to steer applicants to areas previously disturbed by mining. In the absence of previously disturbed sites the site selection process requires an evaluation of nearby candidate sites with the goal of choosing the site that results in minimal adverse impacts. Following the Department's approval of the applicant's site selection, the applicant proceeds to the second step which involves preparing and submitting a permit application for the selected site. The proposed § 90.5 language outlines the need to conduct the mandatory site selection step prior to applying for a permit for coal refuse disposal activities. Proposed § 88.281 of the anthracite regulations cross-references the site selection requirements of Chapter 90.

§ 90.12 Geology

Revisions are proposed to § 90.12 to solicit a more appropriate geologic description for proposed coal refuse disposal sites. The existing language in § 90.12 is borrowed from Chapter 87 and was written to gather information relating to sites where coal will be mined. The proposed language solicits information on surficial geology, soils, and characteristics of joints and fractures. This information is more useful in evaluating sites that will be used for coal refuse disposal activities.

§ 90.13 Groundwater information

Revisions are proposed to § 90.13 to reflect the requirements of Section 6.1(i) of CRDCA. Under the Act 114 amendments all new coal refuse disposal areas must include systems to prevent adverse impacts to surface and groundwater. The effectiveness of any system designed to drain, divert, contain or otherwise control groundwater and surface water in and around coal refuse disposal piles is, in part, dependent on an understanding of a site's pre-

disposal groundwater/surface water interactions. Proposed § 90.13 is intended to collect this information in order to allow a complete technical evaluation of the proposed groundwater and surface water protection system.

§ 90.34 Reclamation: postdisposal land use

Section 90.34 contains revisions to reflect more clearly the fact that postdisposal land use consistently differs from predisposal land use. In addition, a minor grammatical change is proposed to improve § 90.34(a)(2).

§ 90.45 Prime farmland

The proposed revision is intended to draw attention, by cross-reference, to the prime farmland provision in the proposed Subchapter E, relating to site selection. Coal refuse disposal is prohibited under Subchapter E on sites with prime farmland unless the site is a preferred site.

§ 90.49 Stream buffer zone variance, and § 88.281 Requirements

The proposed language reflects Section 6.1(h)(5) of CRDCA, which gives the Department authority to grant a variance to dispose of coal refuse within 100 feet (30.48 m) of the bank of a stream and to relocate or divert streams for the purpose of coal refuse disposal. Language is included to ensure that coal refuse disposal operations, which fall outside the scope of § 90.49, comply with the stream buffer zone provisions of Chapter 86, § 86.102(12). The proposed § 90.49 requires that the variance be issued as a written order and that operators give public notice of the application for the variance. There are also provisions requiring the Department to conduct a public hearing when any person files an exception to the proposed variance.

Prior to the development of the proposed regulations, the Department had submitted the Act 114 amendments to OSM for approval as a program amendment. Proposed § 90.49 includes a requirement that each stream variance for purposes of coal refuse disposal must be accompanied by a demonstration that *"the activities will not cause or contribute to the violation of state or federal water quality standards, and will not adversely affect water quality and quantity, or other environmental resources of the stream."* This requirement differs from the precise language of Section 6.1(h)(5) of CRDCA, which requires a demonstration that *"there will be no significant adverse hydrologic or water quality impacts as a result of the variance."* The proposed language is based on federal program requirements communicated to the Department by OSM in its conditional approval of the Act 114 amendments. The Department previously took action to address this matter by suspending implementation of the term "significant" in Section 6.1(h)(5). This matter was announced in 28 Pa.B. 2544 (May 30,1998). Other changes necessary to make this requirement consistent with the federal counterpart requirement are incorporated in proposed § 90.49(c)(1).

§ 90.50 Design criteria: Groundwater and surface water protection system, and § 88.28 Requirements

The proposed language reflects Section 6.1(i) of CRDCA, which requires that all new coal refuse areas include systems to prevent adverse impacts to surface and groundwater and to prevent precipitation from contacting the coal refuse. The proposed § 90.50 outlines design criteria relating to these systems and requires that the applicant provide a determination of the potential mine subsidence related impacts. The phrase *"...prevent precipitation from coming into contact with the coal refuse"* in § 90.50(b) is based on Section 6.1(i) language. This statutory requirement was intended to ensure that precipitation contacting the coal refuse is kept to a minimum thereby reducing the volume of water needing treatment after the site is closed. The system is required to be designed and installed in a manner that minimizes the amount of time coal refuse is exposed to precipitation. The object is to have the system installed incrementally as refuse disposal progresses. The final system, in conjunction with the groundwater and surface water diversion systems, will result in greatly reduced postdisposal outflows. Section 88.281 of the anthracite regulations cross-references the requirements of § 90.50.

§ 90.116a Hydrologic balance: Water rights and replacement

The proposed language is included to formally incorporate the existing water supply replacement criteria of § 87.119 into Chapter 90. The requirement at § 87.119 applies to all surface mining activities, one of which is coal refuse disposal. It has been historically used to address water supply impacts at coal refuse sites.

§ 90.122 Coal refuse disposal, and § 88.310 Coal refuse disposal: general requirements

The proposed revisions include performance standards based on requirements of Section 6.1(i) of CRDCA relating to systems that prevent precipitation from contacting the coal refuse and systems that prevent adverse impacts to surface and groundwater. When coupled with the proposed design criteria at § 90.50 (cross-referenced in the anthracite regulations at § 88.281), the revised §§ 90.122 and 88.310 will require that coal refuse disposal areas be provided with the groundwater and surface water protection systems prescribed by Section 6.1(i) of CRDCA.

Additionally, existing §§ 90.122(e) and (g) are proposed to be deleted. Subsection 90.122(e) is unnecessary since it duplicates requirements for information that is required in greater detail under §§ 90.122(d) and (f). Subsection 90.122(g) is not needed due to the fact that new coal refuse disposal sites will be required to include design features, such as the system to protect groundwater and surface water, that will address groundwater discharges and surface water flows at proposed disposal sites.

The revision will also correct a typographical error at § 88.310(e).

§ 90.167 Cessation of operation: temporary, and § 88.332 Cessation of operations: temporary

The proposed revisions reflect Section 6.1(i) of CRDCA which requires that the system for preventing precipitation from contacting the coal refuse be installed when the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of ninety days.

Subchapter E. Site Selection (All of Subchapter E is incorporated into Chapter 88 by cross-reference at § 88.281.)

The proposed Subchapter E covers the site selection process required under Section 4.1 of CRDCA. The site selection process takes place prior to the time of permit application and is designed to ensure that coal refuse disposal will take place in a suitable location.

§ 90.201 Definitions

Section 90.201 is a newly proposed section. It defines the terms that apply to the site selection process.

The proposed definition of the term "preferred site" is taken verbatim from Section 4.1 of CRDCA. Under CRDCA, a preferred site is either an unreclaimed mine site or a site polluted by acid mine drainage. One of the prime functions of the Act 114 revisions to CRDCA was to steer mine operators to preferred sites.

The proposed definition of the term "search area" is based on Sections 4.1(c) and (d) of CRDCA. Since the source of coal refuse is normally a coal preparation facility, the definition delineates the search area based on the location of the preparation facility.

The proposed definition of the term "selected site" was added to clarify its meaning as used throughout Subchapter E. Due to the use of similar terms in the proposed regulations, such as "preferred site," "alternate site," and "approved site," it was necessary to provide a specific definition for the term "selected site".

§ 90.202 General requirements, § 90.203 Proposing a preferred site, and § 90.204 Proposing an alternate site

Proposed §§ 90.202, 90.203, and 90.204 are based on Section 4.1 of CRDCA. Section 90.202 outlines general provisions regarding the evaluation and comparison of preferred and alternate sites. It also addresses areas where coal refuse disposal is restricted. Section 90.203 addresses the standard of approval for preferred sites. Section 90.204 outlines the procedures that apply when an applicant proposes an alternate site. Subsection (a) covers situations where both preferred sites and alternate sites are present within the search area. Subsection (b) applies to situations where no preferred sites exist within the search area. The proposed language spells out the process for evaluation of available sites for coal refuse disposal, a process for delineating sites to be evaluated based on the search areas prescribed under

Subsections 4.1(c) and (d) of CRDCA, and a process for demonstrating that an alternate site is the most suitable for coal refuse disposal.

§ 90.205 Alternatives analysis

Proposed § 90.205 describes the provisions of Section 4.1(e) of CRDCA. It clarifies that the alternatives analysis conducted under Subchapter E fulfills the alternatives analysis requirements of the Dam Safety and Encroachments Act.

§ 90.206 Disapproval of a proposed site

The proposed language is designed to clarify that the Department's disapproval of a given site under the site selection process relates to that site and not to the entire search area or to areas beyond the search area.

§ 90.207 Approval of a selected site

The proposed language reflects the fact that final approval for coal refuse disposal is given after review of the complete coal refuse disposal permit application, and that permit issuance is not an automatic extension of the site selection approval. The final decision regarding permit issuance is contingent upon the design of the facility meeting the requirements of Chapters 86 – 90.

Subchapter F. Coal Refuse Disposal Activities on Areas with Preexisting Pollutional Discharges. (All of Subchapter F is incorporated into Chapter 88 by cross-reference at § 88.281.)

§ 90.301 Scope, § 90.302 Definitions, § 90.303 Applicability, § 90.304 Application for authorization, § 90.305 Application approval or denial, § 90.306 Operational requirements, § 90.307 Treatment of discharges, § 90.308 Request for bond release, and § 90.309 Criteria and schedule for release of bonds on pollution abatement areas

The proposed subchapter is designed to provide incentives for operators to enter, conduct coal refuse disposal activities, and reclaim areas that were previously affected by coal mining activities that have pollutional discharges. The proposed language is modeled on the existing remining incentive provisions of Chapters 87 and 88. These provisions have been in effect since 1985 and have been successful in encouraging operators to enter sites with preexisting pollutional discharges. The result has been new and innovative technology for the control and treatment of mine drainage, improvement to water quality, recovery of coal reserves that would otherwise remain unmined, and reclamation of abandoned sites at operator cost instead of state cost.

At the present time, coal refuse disposal site operators who re-affect areas with existing pollutional discharges will have their bonds held by the Department unless they eliminate those discharges. As a result, operators typically develop coal refuse disposal operations on virgin sites. Section 6.2 of CRDCA was intended to provide incentives to encourage operators to

re-affect previously disturbed land by creating a limited exception to the existing regulations. These exceptions provide for special permits and release of bonds at areas with preexisting pollutional discharges. The proposed regulations are expected to encourage reclamation of abandoned mine lands.

The major provision of proposed Subchapter F is a modified level of treatment required for preexisting discharges which are not encountered during re-disturbance of a site or during the implementation of the abatement program. For this class of discharges, Section 6.2 of CRDCA establishes a baseline pollution load treatment level based on "best professional judgment" instead of the standard treatment levels required under the existing § 90.102. An effluent limitation based on best professional judgment takes into account the quality and quantity of the preexisting discharge on a case-by-case basis; whereas the standard effluent limitations set fixed limitations for all discharges regardless of preexisting quality. The proposed regulations obligate the Department to release bonds if the abatement plan significantly improves the quality of the discharges. If the operator fails to obtain a significant improvement but, nevertheless, does not worsen the discharges, the Department is still obligated to release the bond provided the operator has taken certain steps specified by the Department that are necessary to improve water quality.

Subchapter G. Experimental Practices. (Subchapter G is incorporated into Chapter 88 by cross-reference at § 88.281.)

§ 90.401 General

The proposed section reflects the requirements of Section 6.3 of CRDCA. The proposed § 90.401 is designed to encourage advances in coal refuse disposal practices and advances in technology that will enhance environmental protection. Federal regulations require substantial coordination during review of experimental practice applications between the state regulatory agency and the federal Office of Surface Mining. Therefore, federal counterpart language relating to experimental practices is fully incorporated by cross-reference at § 90.401(b) to ensure that the proposed language is consistent with the federal requirements.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a statement of the benefits of a proposed regulation, as well as the costs that may be imposed.

These proposed regulations should result in substantial benefits to the Commonwealth. Although costs and benefits cannot be calculated with precision, the Department has developed some estimates that provide a means of gauging the significance of these regulations. The benefits and costs are as follows:

1. The site selection provisions of the proposed regulations are designed to steer operators who are evaluating coal refuse disposal sites to areas previously disturbed by mining. The regulations minimize the total number of disposal sites. The limited number of sites serves to minimize the likelihood of citizens being

exposed to the effects of coal refuse disposal. In order to make the use of sites with preexisting discharges more palatable to operators, Act 114 included provisions for modified discharge limits and alternative reclamation standards. Unlike the other sections of Act 114, these provisions were not self-implementing. They are contingent on this rulemaking. This rulemaking will therefore fulfill the intent of Act 114.

2. Prior to the Act 114 amendment to CRDCA, operators were exposed to potentially unlimited liability for treatment of preexisting discharges that would remain after coal refuse disposal was complete. This potential liability has discouraged operators from re-entering sites and thus limited the amount of operator reclamation.

3. The proposed Subchapter F (relating to activities on areas with preexisting discharges) will impose no new costs on private entities. This is because the proposed regulations simply create an option for operators to use if they so choose. If operators choose to use sites with preexisting discharges, they will bear slightly higher costs in preparing permit applications than they would incur for other permit applications. Costs will be related to the development of abatement plans, as well as implementation of the abatement plans and certification of completion of such plans. Costs will vary based on the number of discharges and the degree of pollution at the site as well as the technology needed to achieve a predicted improvement. Costs for characterization of discharge quality and quantity are estimated to be approximately $500 per discharge. The regulations will be used where operators perceive that the economic benefits for disposing of coal refuse in an area previously affected by mining outweigh the additional costs required to characterize the preexisting discharges.

4. The proposed Subchapter E (relating to site selection) provisions mirror the self-implementing provisions of Act 114. The regulated industry has been complying with the requirements since Act 114 became effective in 1995. The additional up-front site characterization and alternatives analysis required by Act 114 and proposed Subchapter E can result in significant costs to the operator ($50,000 - $70,000 per site).

5. Act 114 and the proposed regulations require coal refuse disposal sites to incorporate systems to prevent adverse impacts to surface and groundwater and to prevent precipitation from contacting the coal refuse. The regulated community has been following this self-implementing Act 114 provision since 1995. The proposed regulations do not add new requirements beyond the statutory requirements. The proposed regulation covering the types of systems to be installed is not prescriptive; therefore, the costs related to design and construction can vary considerably depending on the systems proposed. However, the costs of designing and installing systems at large coal refuse disposal sites may be substantial. The economic impact is partly mitigated due to the limited number of

anticipated sites and the fact that the state's largest coal producers will typically develop these sites. Additionally, since the required systems will reduce groundwater and surface water recharge to the coal refuse pile, the costs will be offset by the long-term savings realized due to reduced water treatment costs.

The benefits of the proposed regulations outweigh the costs for the following reasons. First, no operator will use the Subchapter F option unless that operator is convinced that he can conduct coal refuse disposal activities on the site and obtain release of bond. Because the proposed regulations present the operator with an option, they will be used only when the operator perceives that the benefits outweigh the costs. In addition, the proposed regulations will result in a reduction of water pollution from areas that have been previously mined, will lead to additional reclamation of areas that have been previously mined, and will benefit the Commonwealth and landowners by promoting the reuse of previously disturbed areas as opposed to virgin sites. In addition, the site-selection provisions, in conjunction with surface and groundwater protection systems, will result in improved water quality and disposal of coal refuse at the most environmentally suitable site available.

The Subchapter F regulations impose no additional paperwork because they merely create an option for operators to disturb areas that contain preexisting pollutional discharges. If an operator exercises this option, Subchapter F does require increased background water quality information not ordinarily required in permit applications. This information is necessary to ensure accurate information about the quantity and quality of preexisting pollutional discharges from the site, so that any changes in background data caused by the proposed activities may be more completely and accurately understood. Subchapter G (relating to experimental practices) will require an applicant to submit a substantial amount of additional paperwork. The additional paperwork will only apply to sites where an operator chooses to propose experimental practices.

G. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of the proposed rulemaking on May 31, 2000, to the Independent Regulatory Review Commission (IRRC), and the Chairperson of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor, and the General Assembly before final publication of the regulation.

I. Public Comments

Written Comments – Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by August 16, 2000 (within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by August 16, 2000. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments - Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us and must also be received by the Board by August 16, 2000. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

J. Public Hearings

The Environmental Quality Board will hold two public hearings for the purpose of accepting comments on this proposal. They will be held at 7:00 p.m. on the following dates:

July 19, 2000	Quality Hotel 100 South Centre Street Pottsville, Pa.
July 28, 2000	Days Inn 127 West Byers Avenue I-70 & Turnpike Exit 8 New Stanton, Pa.

Persons wishing to present testimony at a hearing are requested to contact Joan Martin at the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the meeting. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the American With Disabilities Act of 1990 should contact Joan Martin directly at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at 1-800-654-598 (TDD) to discuss how the Department may accommodate their needs.

By:

JAMES M. SEIF
Chairman
Environmental Quality Board

PENNSYLVANIA CODE
TITLE 25. ENVIRONMENTAL PROTECTION
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CHAPTER 88. ANTHRACITE COAL

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§ 88.281. Requirements.

A person who conducts coal refuse disposal activities shall comply with the performance standards and design requirements of this subchapter, AND CHAPTER 90, SUBCHAPTER E (RELATING TO SITE SELECTION), SUBCHAPTER F (RELATING TO COAL REFUSE DISPOSAL ACTIVITIES ON AREAS WITH PREEXISTING POLLUTIONAL DISCHARGES), SUBCHAPTER G (RELATING TO EXPERIMENTAL PRACTICES), § 90.5 (RELATING TO SITE SELECTION AND PERMITTING), § 90.50 (RELATING TO DESIGN

CRITERIA: GROUNDWATER AND SURFACE WATER PROTECTION SYSTEM), AND § 90.49 (RELATING TO STREAM BUFFER ZONE VARIANCE).

(1) Disposal of coal refuse in an active surface mine shall comply with the performance standards set forth in Subchapter B (relating to surface anthracite coal mines: minimum environmental protection performance standards); and § 88.315 (relating to coal refuse disposal: active surface mines).

(2) Disposal of coal refuse in an active bank removal operation shall comply with the performance standards of Subchapter C (relating to anthracite bank removal and reclamation: minimum environmental protection performance standards).

(3) Disposal of coal refuse in an abandoned or active underground coal mine shall comply with the performance standards set forth in Subchapter F (relating to anthracite underground mines).

§ 88.310. Coal refuse disposal: general requirements.

(a) Coal refuse shall be hauled or conveyed to and placed in designated disposal areas authorized for such purposes. The refuse shall be placed in a controlled manner to ensure the following:

(1) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Stability of the disposal area.

(3) That leachate and surface runoff from the disposal area will not degrade surface waters or groundwaters or exceed the established effluent limitations.

(b) The disposal area shall be designed using recognized professional standards and approved by the Department. The design shall be certified by a registered professional engineer.

(c) All trees, grasses, shrubs and other organic materials shall be removed for a distance of 50 feet from the current disposal area concurrent with the placement of refuse.

(d) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(e) The coal refuse to be placed in [full] THE FILL shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and ensure a long-term static safety factor of 1.5 and seismic safety factor of 1.2.

(f) The final configuration of the disposal must be suitable for the approved postmining land uses.

(g) Terraces may be utilized to control erosion and enhance stability if approved by the Department.

(h) If the disposal area contains springs, natural or manmade water-courses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(i) Coal refuse may be returned to underground mine workings, but only in accordance with a disposal program approved by the Department and MSHA.

(j) THE SYSTEM TO PREVENT ADVERSE IMPACTS TO THE SURFACE WATER AND GROUNDWATER SHALL BE CONSTRUCTED IN ACCORDANCE WITH DESIGN SCHEMATICS, TEST RESULTS, DESCRIPTIONS, PLANS, MAPS, PROFILES OR CROSS-SECTIONS APPROVED IN THE PERMIT AND SHALL FUNCTION TO PREVENT ADVERSE IMPACTS TO SURFACE WATER AND GROUNDWATER.

(k) THE SYSTEM TO PREVENT PRECIPITATION FROM COMING IN CONTACT WITH THE COAL REFUSE SHALL BE CONSTRUCTED IN ACCORDANCE WITH DESIGN SCHEMATICS, DESCRIPTIONS, PLANS, MAPS, PROFILES AND CROSS-SECTIONS APPROVED IN THE PERMIT AND SHALL FUNCTION TO PREVENT PRECIPITATION FROM CONTACTING THE COAL REFUSE. THE SYSTEM SHALL BE INSTALLED AS PHASES OF THE DISPOSAL AREA REACH CAPACITY, AS SPECIFIED IN THE PERMIT, WHEN THE OPERATION TEMPORARILY CEASES FOR A PERIOD IN EXCESS OF 90 DAYS (UNLESS THE DEPARTMENT APPROVES A LONGER PERIOD, NOT TO EXCEED ONE YEAR) OR WHEN THE OPERATION PERMANENTLY CEASES. THE SYSTEM SHALL BE DESIGNED TO ALLOW FOR REVEGETATION OF THE SITE IN ACCORDANCE WITH THE STANDARD OF SUCCESS UNDER § 88.330 (RELATING TO REVEGETATION: STANDARDS FOR SUCCESSFUL REVEGETATION) AND FOR PREVENTION OF EROSION.

§ 88.332. Cessation of operations: temporary.

(a) As soon as it is known that the operation will temporarily cease for more than 30 days, the operator shall submit a notice of intention, in writing, to temporarily cease the operation. The notice shall include a statement of the exact number of acres which will have been affected in the permit area, the extent and kind of reclamation of those areas, and identification of the backfilling, regrading, revegetation, monitoring and water treatment activities that will continue during the temporary cessation. THE SYSTEM FOR PREVENTING PRECIPITATION FROM CONTACTING THE COAL REFUSE SHALL BE INSTALLED WHEN THE TEMPORARY CESSATION EXCEEDS 90 DAYS. THE DEPARTMENT MAY

APPROVE A LONGER PERIOD, NOT TO EXCEED ONE YEAR, UNDER SUBSECTION (b) OF THIS SECTION.

(b) Temporary cessation of an operation may not exceed 90 days unless the Department approves a longer period for reasons of seasonal shutdown or labor strike.

(c) Temporary cessation shall not relieve the operator of the obligation to comply with any provisions of the permit.

PENNSYLVANIA CODE
TITLE 25. ENVIRONMENTAL PROTECTION
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CHAPTER 90. COAL REFUSE DISPOSAL

Subchap.		Sec.
A.	GENERAL PERMIT AND APPLICATION REQUIREMENTS FOR COAL REFUSE DISPOSAL	90.1
B.	MINIMUM ENVIRONMENTAL RESOURCES INFORMATION REQUIRED IN PERMIT APPLICATIONS FOR COAL REFUSE DISPOSAL	90.11
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G.	EXPERIMENTAL PRACTICES	90.401

A. GENERAL PERMIT AND APPLICATION REQUIREMENTS FOR COAL REFUSE DISPOSAL

§ 90.1. Definitions.

* * * * *

PUBLIC RECREATIONAL IMPOUNDMENT - A CLOSED BASIN, NATURALLY FORMED OR ARTIFICIALLY BUILT, WHICH IS DAMMED OR EXCAVATED FOR THE RETENTION OF WATER AND WHICH IS OWNED, RENTED OR LEASED BY THE FEDERAL GOVERNMENT, THE COMMONWEALTH OR A POLITICAL SUBDIVISION OF THE COMMONWEALTH AND WHICH IS USED FOR SWIMMING, BOATING, WATER SKIING, HUNTING, FISHING, SKATING OR OTHER SIMILAR ACTIVITIES.

* * * * *

§ 90.5. SITE SELECTION AND PERMITTING.

(a) PRIOR TO APPLYING FOR A PERMIT TO CONDUCT COAL REFUSE DISPOSAL ACTIVITIES, THE APPLICANT SHALL COMPLY WITH SUBCHAPTER E (RELATING TO SITE SELECTION).

(b) AFTER THE DEPARTMENT HAS APPROVED A SITE IN ACCORDANCE WITH SUBCHAPTER E, THE APPLICANT MAY APPLY FOR A PERMIT FOR COAL REFUSE DISPOSAL ACTIVITIES IN ACCORDANCE WITH THE STANDARDS SET FORTH IN CHAPTERS 86, 88 AND 90.

§ 90.12. Geology.

[a] The application shall include a description of the area and structural geology within the proposed permit and adjacent area, including the lithology of the strata that influence the occurrence,

availability, movement and quality of groundwater that may be affected by the coal refuse disposal[,]. [including the following:

(1)] For lands within the proposed permit and adjacent areas, the applicant shall provide a description of the geology with complementing maps and cross sections and the results of test borings[. and coal samplings. The description shall include the stratum immediately beneath the coal seam to be mined and all overlying strata, or, where an aquifer or existing deep mine below the lowest coal to be mined may be affected, the aquifer or existing deep mine and all overlying strata for mines underlain by existing deep mines and greater than 200 feet below surface drainage throughout the proposed mine, the description need only include the strata down to and including the stratum immediately below the coal seam to be mined]. THE DESCRIPTION SHALL INCLUDE THE STRATA DOWN TO AND INCLUDING ANY AQUIFER THAT MAY BE AFFECTED. At a minimum, the description shall include:

[(i)] (1) Location and quality of subsurface water.

[(ii)] (2) Depth, lithology and structure [of overburden or underlying strata.] OF NEAR-SURFACE BEDROCK.

[(iii)] (3) Location, identification and status of mining and coal refuse disposal operations within or adjacent to the proposed permit area.

[(2) For any portion of a permit area in which the strata will be removed, test borings or core samples shall be collected down to and including the stratum immediately below the lowest coal seam to be mined or stratum to be removed and analyzed to provide the following data:

(i) Logs of drill holes that show the lithologic characteristics, including physical characteristics and thickness of each stratum, and location and quality of groundwater.

(ii) Chemical analyses of each stratum with the overburden and the stratum immediately below the coal seam to be mined to identify those strata that contain acid-forming, toxic-forming or alkalinity-producing materials.

(iii) Chemical analyses for acid-forming and toxic-forming substances of the coal seam, including the total sulfur content.

(b) An application may request that the requirements for a statement of the results of the test borings or core samplings, as required under subsection (a)(2), may be waived in part or in its entirety by the Department.]

(4) A DESCRIPTION OF ANY GLACIAL, ALLUVIAL, OR COLLUVIAL DEPOSITS OR OTHER UNCONSOLIDATED DEPOSITS THAT ARE PRESENT WITHIN OR BENEATH THE PROPOSED PERMIT AREA, INCLUDING THEIR THICKNESS AND LOCATION.

(5) A DESCRIPTION OF ANY MINE WORKINGS THAT ARE PRESENT BENEATH THE PROPOSED PERMIT AREA.

(6) ATTITUDE AND CHARACTERISTICS OF JOINTS, CLEATS, FRACTURE ZONES, AND FAULTS WITHIN THE PERMIT AND ADJACENT AREAS.

(7) LOCATION AND IDENTIFICATION OF ALL COAL SEAM CROPLINES WITHIN THE PERMIT AREA.

(8) A DESCRIPTION OF THE PHYSICAL CHARACTERISTICS OF SOILS WITHIN THE PERMIT AREA.

(9) A DESCRIPTION OF AQUIFERS THAT ARE PRESENT BENEATH THE PROPOSED PERMIT AREA.

§ 90.13. Groundwater information.

The application shall contain a description of the premining or baseline groundwater hydrology of the proposed permit and adjacent area, including the following:

(1) The results of a groundwater inventory of existing wells, springs and other valuable groundwater resources, providing information on location, quality, quantity, depth to water and usage of the groundwater for the proposed permit and potentially impacted offsite areas. Information on water availability and occurrence, and alternate water supplies shall be emphasized and water quality information relating to suitability for existing predisposal use shall be provided. At a minimum, water quality descriptions shall include total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, alkalinity, acidity and sulfates.

(2) Other information on the baseline hydrogeologic properties of the groundwater system shall be included with the application. The Department may require information on indicator parameters such as pumping test, lithologic and piezometer data or THAT other appropriate information be provided. SPECIFIC ATTENTION MUST BE GIVEN TO DESCRIBING THE GROUNDWATER FLOW SYSTEM AS IT RELATES TO THE DESIGN AND OPERATION OF THE PROPOSED GROUNDWATER AND SURFACE WATER PROTECTION SYSTEM AS DESCRIBED IN § 90.50 (RELATING TO DESIGN CRITERIA: GROUNDWATER AND SURFACE WATER PROTECTION SYSTEM).

§ 90.34. Reclamation: postdisposal land use.

(a) An application shall contain a description of the proposed land use, following reclamation, of the lands to be affected within the proposed permit area by coal refuse disposal activities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain THE FOLLOWING:

(1) How the proposed postdisposal land use is to be achieved, and the necessary support activities which may be needed to achieve the proposed land use.

(2) [When pastureland is the postdisposal land use, t]The detailed management plan to be implemented WHEN PASTURELAND IS THE POSTDISPOSAL LAND USE.

(3) [When a land use different from the predisposal land use is proposed, m] Materials needed for approval of the alternative use under § 90.166 (relating to postdisposal land use).

(4) The consideration given to making all of the proposed coal refuse disposal activities consistent with surface owner plans and applicable Commonwealth and local land use plans and programs.

(b) If an alternate land use is proposed, the description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by coal refuse disposal activities within the proposed permit area, and from this Commonwealth and local government agencies which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation.

§ 90.45. Prime farmland.

A person who conducts, or intends to conduct, coal refuse disposal activities on prime farmlands historically used for cropland, IN ACCORDANCE WITH SUBCHAPTER E (RELATING TO SITE SELECTION), shall submit a plan, as part of the permit application, for the disposal and restoration of the land. The plan shall contain, at a minimum:

(1) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with §§ 90.161–90.165.

(2) The proposed measures to be taken during soil reconstruction to prevent excessive compaction and achieve soil bulk densities which will result in the restored area returned to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management.

(3) The location of areas to be used for the separate stockpiling of soil and plans for soil stabilization before redistribution.

(4) Documentation, if applicable, such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable material, instead of the B or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as nondisposal prime farmlands in the surrounding area under equivalent levels of management.

(5) Plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under Chapter 86 Subchapter E (relating to coal exploration). Proper adjustments for seasons shall be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(6) Available agricultural school studies or other scientific data for areas with comparable soils, climate and management–including water management–that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

(7) A soil survey with description of soil mapping units and representative soil profile under § 90.22 (relating to prime farmland investigation). The soil profile description shall include, but not be limited to, soil horizon depths, pH and range of soil densities for each prime farmland soil unit within the proposed permit area. The Department may require the applicant to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of §§ 90.161–90.165.

§ 90.49. STREAM BUFFER ZONE VARIANCE.

(a) *STREAM BUFFER ZONE RESTRICTION.* COAL REFUSE DISPOSAL OPERATIONS MAY NOT OCCUR WITHIN 100 FEET (30.84 METERS) OF THE BANK OF A STREAM. THE DEPARTMENT MAY GRANT A VARIANCE FOR DISPOSAL OF COAL REFUSE UNDER SUBSECTION (c).

(b) *COMPLIANCE REQUIRED.* COAL REFUSE DISPOSAL OPERATIONS OTHER THAN COAL REFUSE DISPOSAL SHALL COMPLY WITH § 86.102(12) (RELATING TO AREAS WHERE MINING IS PROHIBITED OR LIMITED).

(c) *VARIANCE.* THE DEPARTMENT MAY GRANT A VARIANCE FROM THE 100-FOOT (30.84-METER) STREAM BUFFER ZONE TO DISPOSE OF COAL REFUSE IN THE 100-FOOT (30.84-METER) STREAM BUFFER ZONE. THE STREAM BUFFER ZONE IS THE AREA WITHIN 100 FEET (30.84 METERS) MEASURED HORIZONTALLY FROM THE BANK OF ANY STREAM.

(1) STREAM BUFFER ZONE VARIANCES WILL ONLY BE GRANTED IF THE OPERATOR DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT THAT THE COAL REFUSE DISPOSAL WILL NOT ADVERSELY AFFECT WATER QUALITY AND QUANTITY, OR OTHER ENVIRONMENTAL RESOURCES OF THE STREAM AND WILL NOT CAUSE OR CONTRIBUTE TO THE VIOLATION OF APPLICABLE STATE OR FEDERAL WATER QUALITY STANDARDS.

(2) PRIOR TO GRANTING A VARIANCE, THE OPERATOR SHALL BE REQUIRED TO GIVE PUBLIC NOTICE OF THE APPLICATION IN TWO NEWSPAPERS OF GENERAL CIRCULATION IN THE AREA ONCE A WEEK FOR TWO SUCCESSIVE WEEKS.

(i) IF A PERSON FILES AN EXCEPTION TO THE PROPOSED VARIANCE WITHIN 20 DAYS OF THE LAST PUBLICATION OF THE NOTICE, THE DEPARTMENT WILL CONDUCT A PUBLIC HEARING WITH RESPECT TO THE APPLICATION WITHIN 30 DAYS OF RECEIPT OF THE EXCEPTION.

(ii) THE DEPARTMENT WILL ALSO CONSIDER INFORMATION OR COMMENTS SUBMITTED BY THE PENNSYLVANIA FISH AND BOAT COMMISSION PRIOR TO TAKING ACTION ON A VARIANCE REQUEST.

(3) THE VARIANCE WILL BE ISSUED AS A WRITTEN ORDER SPECIFYING THE METHODS AND TECHNIQUES THAT SHALL BE EMPLOYED TO PREVENT OR MITIGATE ADVERSE IMPACTS.

§ 90.50. DESIGN CRITERIA: GROUNDWATER AND SURFACE WATER PROTECTION SYSTEM.

(a) THE APPLICATION SHALL INCLUDE A DESCRIPTION OF THE SYSTEM THAT WILL BE INSTALLED TO PREVENT ADVERSE IMPACTS TO GROUNDWATER AND SURFACE WATER. THE DESCRIPTION SHALL INCLUDE MAPS, PLANS, AND OTHER INFORMATION NECESSARY TO EVALUATE THE DESIGN OF THE SYSTEM.

(b) THE APPLICATION SHALL INCLUDE A DESCRIPTION OF THE SYSTEM THAT WILL BE INSTALLED TO PREVENT PRECIPITATION FROM COMING INTO CONTACT WITH THE COAL REFUSE. THE DESCRIPTION SHALL INCLUDE MAPS, PLANS, AND OTHER INFORMATION NECESSARY TO EVALUATE THE DESIGN OF THE SYSTEM. THE COAL REFUSE DISPOSAL OPERATION SHALL BE DESIGNED IN PHASES TO MINIMIZE THE AMOUNT OF TIME THE ENTIRE COAL REFUSE AREA IS EXPOSED TO PRECIPITATION PRIOR TO THE INSTALLATION OF THE SYSTEM TO PREVENT PRECIPITATION FROM CONTACTING THE COAL REFUSE. THE APPLICATION SHALL DESCRIBE THE DESIGN OF THE SYSTEM FOR PREVENTING PRECIPITATION FROM CONTACTING COAL REFUSE AND HOW THE SYSTEM WILL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING:

(1) DURING ROUTINE COAL REFUSE DISPOSAL AS PHASES OF THE COAL REFUSE DISPOSAL AREA REACH CAPACITY.

(2) DURING PERIODS OF TEMPORARY CESSATION AS DIRECTED UNDER § 90.167(d) (RELATING TO CESSATION OF OPERATIONS: TEMPORARY).

(3) WHEN THE OPERATION PERMANENTLY CEASES.

(c) THE APPLICATION SHALL INCLUDE A DESCRIPTION OF THE SITE'S SUSCEPTIBILITY TO MINE SUBSIDENCE AND THE POTENTIAL IMPACTS OF MINE SUBSIDENCE ON THE SYSTEMS DESCRIBED IN SUBSECTIONS (a) AND (b). THE DESCRIPTION SHALL INCLUDE THE MEASURES TO BE TAKEN TO ENSURE THE LONG-TERM FUNCTIONALITY OF THE SYSTEMS DESCRIBED IN SUBSECTIONS (a) AND (b) WITH PARTICULAR ATTENTION TO SUBSIDENCE-INDUCED IMPACTS OR OTHER PHYSICAL OR CHEMICAL PROCESSES THAT COULD ADVERSELY AFFECT THE OPERATION OF THE SYSTEMS.

§ 90.101. Hydrologic balance: general requirements.

(a) Coal refuse disposal activities shall be planned and conducted to minimize disturbances to the prevailing hydrologic balance in the permit and adjacent areas and to prevent material damage to the hydrologic balance outside the permit area. The Department may require additional preventive, remedial or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented.

(b) Coal refuse disposal activities shall be planned and conducted to prevent pollution of [the water] GROUNDWATER AND SURFACE WATER and prevent, to the maximum extent possible, changes to the water quantity, depth to groundwater and location of surface water drainage channels so that the approved postdisposal land use of the permit is not adversely affected.

(c) In no case shall the treatment requirements and effluent limitations established under § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices) be violated.

(d) Operations shall be conducted to prevent water pollution and, when necessary, treatment methods shall be used.

(e) A person who conducts coal refuse disposal activities shall conduct the disposal and reclamation operation to prevent water pollution and, when necessary, operate and maintain the

necessary water treatment facilities until applicable treatment requirements and effluent limitations established under § 90.102 are achieved and maintained.

§ 90.116a. HYDROLOGIC BALANCE: WATER RIGHTS AND REPLACEMENT.

A PERSON WHO CONDUCTS COAL REFUSE DISPOSAL ACTIVITIES AND ADVERSELY AFFECTS A WATER SUPPLY BY CONTAMINATION, POLLUTION, DIMINUTION, OR INTERRUPTION SHALL COMPLY WITH § 87.119 (RELATING TO WATER RIGHTS AND REPLACEMENT).

§ 90.122. Coal refuse disposal.

(a) Coal refuse shall be transported and placed in designated disposal areas approved by the Department for this purpose. These areas shall be within the permit area. The coal refuse disposal area shall be designed, constructed and maintained to ensure:

(1) The leachate and surface runoff from the permit area will not degrade surface water or groundwater or exceed the effluent limitations of § 90.102 (relating to hydrologic balance: water quality standards, effluent limitations and best management practices).

(2) Prevention of combustion.

(3) Prevention of public health hazards.

(4) Stability of the fill.

(5) That the land mass designated as the coal refuse disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(b) The fill shall be designed using recognized professional standards, certified by a qualified registered professional engineer, and approved by the Department.

(c) The foundation and abutment of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigations and laboratory testing of foundation materials and coal refuse shall be performed to determine the design requirements for stability of the facility. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(d) The coal refuse disposal fill shall be designed to attain a minimum long term static factor of safety of 1.5 and a minimum seismic factor of safety of 1.2, based upon data obtained from subsurface exploration, geotechnical testing, foundation design, fill design and accepted engineering analyses.

[(e) The coal refuse disposal area shall be located on the most moderately sloping and naturally stable areas available as approved by the Department. Fill materials suitable for disposal shall be placed upon or above a natural terrace, bench or berm to provide additional stability and prevent mass movement.]

(e)[(f)] When the average slope of coal refuse disposal area exceeds 1v:2.8h–36%, or such lesser slopes as may be designated by the Department based on local conditions, key way cuts, or excavation into stable bedrock or bedrock toe buttresses shall be constructed to stabilize the fill. When the toe of the fill rests on a downslope, stability analysis shall be performed in accordance with § 90.39 (relating to ponds, impoundments, banks, dams, embankments, piles and fills) to determine the size of rock toe buttresses and key way cuts.

[(g) The coal refuse disposal area should be located in areas where groundwater discharge and surface water flows are minimal.]

(f)[(h)] If the disposal area contains springs, natural or manmade watercourses, or wet-weather seeps, the Department may approve an underdrain/subdrainage system, consisting of durable rock or other materials, designed and placed in a manner that prevents infiltration of the water into the fill material and ensures continued free drainage from the wet areas.

(g) THE DISPOSAL AREA SHALL BE PROVIDED WITH A SYSTEM TO PREVENT ADVERSE IMPACTS TO THE SURFACE WATER AND GROUNDWATER. THE SYSTEM MUST

BE CONSTRUCTED IN ACCORDANCE WITH DESIGN SCHEMATICS, TEST RESULTS, DESCRIPTIONS, PLANS, MAPS, PROFILES OR CROSS-SECTIONS APPROVED IN THE PERMIT AND SHALL FUNCTION TO PREVENT ADVERSE IMPACTS TO SURFACE WATER AND GROUNDWATER.

(h) THE DISPOSAL AREA SHALL BE PROVIDED WITH A SYSTEM TO PREVENT PRECIPITATION FROM COMING IN CONTACT WITH THE COAL REFUSE. THE SYSTEM MUST BE CONSTRUCTED IN ACCORDANCE WITH DESIGN SCHEMATICS, TEST RESULTS, DESCRIPTIONS, PLANS, MAPS, PROFILES OR CROSS-SECTIONS APPROVED IN THE PERMIT AND SHALL FUNCTION TO PREVENT PRECIPITATION FROM CONTACTING THE COAL REFUSE. THE SYSTEM SHALL BE INSTALLED AS PHASES OF THE DISPOSAL AREA REACH CAPACITY, AS SPECIFIED IN THE PERMIT, WHEN THE OPERATION TEMPORARILY CEASES FOR A PERIOD IN EXCESS OF 90 DAYS (UNLESS THE DEPARTMENT APPROVES A LONGER PERIOD, NOT TO EXCEED ONE YEAR) OR WHEN THE OPERATION PERMANENTLY CEASES. THE SYSTEM SHALL BE DESIGNED TO ALLOW FOR REVEGETATION OF THE SITE IN ACCORDANCE WITH THE STANDARD OF SUCCESS UNDER § 90.159 (RELATING TO REVEGETATION) AND FOR THE PREVENTION OF EROSION.

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§ 90.167. Cessation of operations: temporary.

(a) As soon as it is known that the operation will temporarily cease for a period of more than 30 days, the operator shall submit a notice of intention, in writing, to temporarily cease the operation. The notice shall include a statement of the exact number of acres that will have been affected in the permit area, the extent and kind of reclamation of those areas, and identification of the disposal, regrading, revegetation, monitoring and water treatment activities which will continue during the temporary cessation.

(b) Temporary cessation of an operation shall not exceed 90 days unless the Department approves a longer period for reasons of seasonal shutdown or labor strike.

(c) Temporary cessation shall not relieve the operator of the obligation to comply with any provisions of the permit.

(d) THE OPERATOR SHALL INSTALL THE SYSTEM FOR PREVENTING PRECIPITATION FROM CONTACTING THE COAL REFUSE WHEN THE TEMPORARY CESSATION EXCEEDS 90 DAYS. THE DEPARTMENT MAY APPROVE A LONGER PERIOD, NOT TO EXCEED ONE YEAR, FOR REASONS OF A LABOR STRIKE OR BUSINESS NECESSITY.

SUBCHAPTER E. SITE SELECTION

§ 90.201. DEFINITIONS.

PREFERRED SITE – A WATERSHED POLLUTED BY ACID MINE DRAINAGE; A WATERSHED CONTAINING AN UNRECLAIMED SURFACE MINE BUT WHICH HAS NO MINING DISCHARGE; A WATERSHED CONTAINING AN UNRECLAIMED SURFACE MINE WITH DISCHARGES THAT COULD BE IMPROVED BY THE PROPOSED COAL REFUSE DISPOSAL OPERATION; UNRECLAIMED COAL REFUSE DISPOSAL PILES THAT COULD BE IMPROVED BY THE PROPOSED COAL REFUSE DISPOSAL OPERATION; OR OTHER UNRECLAIMED AREAS PREVIOUSLY AFFECTED BY MINING ACTIVITIES.

SEARCH AREA – FOR A PROPOSED COAL REFUSE DISPOSAL SITE ASSOCIATED WITH AN EXISTING COAL MINING ACTIVITY, IT IS THE GEOGRAPHICAL AREA WITHIN A ONE-MILE RADIUS OF THE EXISTING COAL PREPARATION FACILITY. FOR A PROPOSED COAL REFUSE DISPOSAL SITE ASSOCIATED WITH A PROPOSED COAL MINING ACTIVITY, IT IS A 25-SQUARE MILE AREA AROUND THE COAL PREPARATION FACILITY. IN DEFINING THE 25-SQUARE MILE AREA, CONSIDERATION SHALL BE GIVEN TO ENVIRONMENTAL, TECHNICAL, TRANSPORTATION, ECONOMIC, AND SOCIAL FACTORS.

SELECTED SITE – A LOCATION SELECTED BY THE APPLICANT AND APPROVED BY THE DEPARTMENT UNDER THIS SUBCHAPTER FOR WHICH THE APPLICANT CAN THEN APPLY FOR A PERMIT TO CONDUCT COAL REFUSE DISPOSAL ACTIVITIES.

§ 90.202. GENERAL REQUIREMENTS.

(a) A PREFERRED SITE SHALL BE USED FOR COAL REFUSE DISPOSAL UNLESS THE APPLICANT DEMONSTRATES TO THE DEPARTMENT THAT AN ALTERNATE SITE IS MORE SUITABLE BASED UPON ENGINEERING, GEOLOGY, ECONOMICS, TRANSPORTATION SYSTEMS, AND SOCIAL FACTORS AND IS NOT ADVERSE TO THE PUBLIC INTEREST.

(b) WHERE THERE ARE NO PREFERRED SITES LOCATED WITHIN THE SEARCH AREA, THE APPLICANT MUST CONDUCT A COMPARATIVE ANALYSIS OF THE POTENTIAL COAL REFUSE DISPOSAL SITES IN ACCORDANCE WITH § 90.204(b) (RELATING TO PROPOSING AN ALTERNATE SITE).

(c) THE DEPARTMENT WILL NOT APPROVE A SITE PROPOSED BY THE APPLICANT FOR COAL REFUSE DISPOSAL ACTIVITIES WHERE THE DEPARTMENT FINDS ONE OF THE FOLLOWING:

(1) THE ADVERSE ENVIRONMENTAL IMPACTS OF USING THE SITE FOR COAL REFUSE DISPOSAL ACTIVITIES WOULD CLEARLY OUTWEIGH THE PUBLIC BENEFITS.

(2) THE SITE IS KNOWN OR IS LIKELY TO CONTAIN FEDERALLY LISTED THREATENED OR ENDANGERED PLANTS OR ANIMALS UNLESS THE DEPARTMENT CONCLUDES AND THE U.S. FISH AND WILDLIFE SERVICE CONCURS THAT THE PROPOSED USE OF THE SITE WOULD BE UNLIKELY TO ADVERSELY AFFECT THOSE SPECIES.

(d) THE DEPARTMENT WILL NOT APPROVE A SITE, UNLESS IT IS A PREFERRED SITE, PROPOSED BY THE APPLICANT FOR COAL REFUSE DISPOSAL IF THE SITE CONTAINS ONE OR MORE OF THE FOLLOWING:

(1) PRIME FARMLANDS.

(2) AN EXCEPTIONAL VALUE WATERSHED AS DEFINED UNDER 25 *PA. CODE* CHAPTER 93 (RELATING TO WATER QUALITY STANDARDS).

(3) THREATENED OR ENDANGERED PLANTS OR ANIMALS LISTED EXCLUSIVELY UNDER PENNSYLVANIA'S PROTECTION PROGRAMS.

(4) AN AREA THAT CONTRIBUTES AT LEAST FIVE PERCENT OF THE DRAINAGE TO WETLANDS DESIGNATED AS EXCEPTIONAL VALUE UNDER 25 *PA. CODE* CHAPTER 105 (RELATING TO DAM SAFETY AND WATERWAY MANAGEMENT) UNLESS A LARGER PERCENTAGE CONTRIBUTION IS AUTHORIZED BY THE DEPARTMENT AFTER CONSULTATION WITH THE PENNSYLVANIA FISH AND BOAT COMMISSION.

(5) A WATERSHED LESS THAN FOUR SQUARE MILES IN AREA UPSTREAM OF THE INTAKE OF A PUBLIC WATER SUPPLY.

(6) A WATERSHED LESS THAN FOUR SQUARE MILES IN AREA UPSTREAM OF THE UPSTREAM LIMIT OF A PUBLIC RECREATIONAL IMPOUNDMENT.

(e) AS PART OF THE SITE SELECTION PROCESS AN APPLICANT MAY REQUEST APPROVAL FOR MORE THAN ONE SITE. THE DEPARTMENT WILL EVALUATE EACH SITE PROPOSED FOR COAL REFUSE DISPOSAL AND, WHERE THE DEPARTMENT FINDS THAT A PROPOSED SITE MEETS THE REQUIREMENTS OF THIS SUBCHAPTER, IT WILL DESIGNATE IT AS AN APPROVED SITE. THE APPLICANT WILL THEN HAVE THE OPTION OF CHOOSING A SELECTED SITE FROM AMONG THE APPROVED SITES AND SUBMITTING AN APPLICATION FOR COAL REFUSE DISPOSAL FOR THAT SITE.

§ 90.203. PROPOSING A PREFERRED SITE.

IF THE APPLICANT PROPOSES TO USE A PREFERRED SITE, THE DEPARTMENT WILL APPROVE THE PROPOSED SITE SUBJECT TO § 90.202(c) (RELATING TO GENERAL REQUIREMENTS) PROVIDED THE APPLICANT DEMONSTRATES THAT THE ATTENDANT ADVERSE ENVIRONMENTAL IMPACTS WILL NOT CLEARLY OUTWEIGH THE PUBLIC BENEFITS.

§ 90.204. PROPOSING AN ALTERNATE SITE.

(a) WHERE A PREFERRED SITE(S) EXISTS WITHIN THE SEARCH AREA, BUT THE APPLICANT PROPOSES AN ALTERNATE SITE, THE APPLICANT MUST:

(1) DEMONSTRATE THAT THE ALTERNATE SITE IS MORE SUITABLE THAN ALL PREFERRED SITES WITHIN THE SEARCH AREA.

(2) IDENTIFY OTHER ALTERNATE SITES CONSIDERED AND PROVIDE THE BASIS FOR THE REJECTION OF THESE SITES.

(3) BASED ON REASONABLY AVAILABLE DATA, DEMONSTRATE THAT IT IS THE MOST SUITABLE SITE BASED ON ENVIRONMENTAL, ECONOMIC, TECHNICAL, TRANSPORTATION AND SOCIAL FACTORS.

(b) IF A PREFERRED SITE DOES NOT EXIST WITHIN THE SEARCH AREA, THE APPLICANT SHALL:

(1) IDENTIFY ALL THE SITES CONSIDERED WITHIN THE SEARCH AREA AND PROVIDE THE BASIS FOR THEIR CONSIDERATION.

(2) PROVIDE THE BASIS FOR THE REJECTION OF CONSIDERED SITES.

(3) BASED ON REASONABLY AVAILABLE DATA, DEMONSTRATE TO THE DEPARTMENT THAT THE PROPOSED SITE IS THE MOST SUITABLE BASED ON ENVIRONMENTAL, ECONOMIC, TECHNICAL, TRANSPORTATION, AND SOCIAL FACTORS.

§ 90.205. ALTERNATIVES ANALYSIS.

THE ALTERNATIVES ANALYSIS REQUIRED BY §§ 90.202(b), 90.204 AND 90.205 SATISFIES THE REQUIREMENT FOR AN ALTERNATIVES ANALYSIS UNDER THE ACT OF NOVEMBER 26, 1978 (P.L. 1375, NO. 325), KNOWN AS THE "DAM SAFETY AND ENCROACHMENTS ACT" AND REGULATIONS PROMULGATED PURSUANT TO THE DAM SAFETY AND ENCHROACHMENTS ACT.

§ 90.206. DISAPPROVAL OF A PROPOSED SITE.

IF THE DEPARTMENT DISAPPROVES THE APPLICANT'S PROPOSED SITE, THE APPLICANT MAY SUBMIT A NEW PROPOSAL SUPPORTING THE SELECTION OF ANOTHER SITE LOCATED EITHER WITHIN OR OUTSIDE OF THE SEARCH AREA.

§ 90.207. APPROVAL OF A SELECTED SITE.

DEPARTMENT APPROVAL OF A SELECTED SITE DOES NOT INDICATE THE DEPARTMENT WILL APPROVE AN APPLICATION FOR COAL REFUSE DISPOSAL ACTIVITIES FOR THE SELECTED SITE.

SUBCHAPTER F. COAL REFUSE DISPOSAL ACTIVITIES ON AREAS WITH PREEXISTING POLLUTIONAL DISCHARGES

§ 90.301. SCOPE.

(a) THIS SUBCHAPTER SPECIFIES PROCEDURES AND RULES APPLICABLE TO THOSE WHO SEEK AUTHORIZATION TO ENGAGE IN COAL REFUSE DISPOSAL ACTIVITIES ON AN AREA ON WHICH THERE ARE PREEXISTING POLLUTIONAL DISCHARGES

RESULTING FROM PREVIOUS MINING AND DESCRIBES THE TERMS AND CONDITIONS UNDER WHICH THE DEPARTMENT MAY RELEASE BONDS TO OPERATORS WHO HAVE RECEIVED AUTHORIZATION.

(b) CHAPTER 86 (RELATING TO SURFACE AND UNDERGROUND COAL MINING: GENERAL) AND SUBCHAPTERS A – D APPLY TO AUTHORIZATIONS TO MINE AREAS WITH PREEXISTING POLLUTIONAL DISCHARGES EXCEPT AS SPECIFICALLY MODIFIED BY THIS SUBCHAPTER.

§ 90.302. DEFINITIONS.

THE FOLLOWING WORDS AND TERMS, WHEN USED IN THIS SUBCHAPTER, HAVE THE FOLLOWING MEANINGS, UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

ABATEMENT PLAN – ANY INDIVIDUAL TECHNIQUE OR COMBINATION OF TECHNIQUES, THE IMPLEMENTATION OF WHICH WILL RESULT IN REDUCTION OF THE BASE LINE POLLUTION LOAD. ABATEMENT TECHNIQUES INCLUDE BUT ARE NOT LIMITED TO: ADDITION OF ALKALINE MATERIAL, SPECIAL PLANS FOR MANAGING TOXIC AND ACID-FORMING MATERIAL, REGRADING, REVEGETATION AND RELOCATING COAL REFUSE TO A COAL REFUSE DISPOSAL AREA THAT INCLUDES SYSTEMS TO PREVENT ADVERSE IMPACTS TO SURFACE AND GROUNDWATER AND TO PREVENT PRECIPITATION FROM CONTACTING THE COAL REFUSE.

ACTUAL IMPROVEMENT – THE REDUCTION OF THE BASELINE POLLUTION LOAD RESULTING FROM THE IMPLEMENTATION OF THE APPROVED ABATEMENT PLAN; EXCEPT THAT ANY REDUCTION OF THE BASELINE POLLUTION LOAD ACHIEVED BY WATER TREATMENT MAY NOT BE CONSIDERED AS ACTUAL IMPROVEMENT PROVIDED, HOWEVER, THAT TREATMENT APPROVED BY THE DEPARTMENT OF THE COAL REFUSE BEFORE, DURING OR AFTER PLACEMENT IN THE COAL REFUSE DISPOSAL AREA SHALL NOT BE CONSIDERED TO BE WATER TREATMENT.

BASELINE POLLUTION LOAD – THE CHARACTERIZATION OF THE POLLUTIONAL MATERIAL BEING DISCHARGED FROM OR ON THE POLLUTION ABATEMENT AREA, DESCRIBED IN TERMS OF MASS DISCHARGE FOR EACH PARAMETER DEEMED RELEVANT BY THE DEPARTMENT, INCLUDING SEASONAL VARIATIONS AND VARIATIONS IN RESPONSE TO PRECIPITATION EVENTS. THE DEPARTMENT WILL ESTABLISH IN EACH AUTHORIZATION THE SPECIFIC PARAMETERS IT DEEMS RELEVANT FOR THE BASELINE POLLUTION LOAD, INCLUDING, AT A MINIMUM, IRON AND ACID LOADINGS.

BEST PROFESSIONAL JUDGMENT – THE HIGHEST QUALITY TECHNICAL OPINION FORMING THE BASIS FOR THE TERMS AND CONDITIONS OF THE TREATMENT LEVEL REQUIRED AFTER CONSIDERATION OF ALL REASONABLY AVAILABLE AND PERTINENT DATA. THE TREATMENT LEVELS SHALL BE ESTABLISHED BY THE DEPARTMENT UNDER SECTIONS 301 AND 402 OF THE FEDERAL WATER POLLUTION CONTROL ACT, ACT OF JUNE 30, 1948 (CH. 758, 62 STAT. 1155).

BEST TECHNOLOGY – MEASURES AND PRACTICES WHICH WILL ABATE OR AMELIORATE, TO THE MAXIMUM EXTENT POSSIBLE, DISCHARGES FROM OR ON THE POLLUTION ABATEMENT AREA. THESE MEASURES INCLUDE ENGINEERING, GEOCHEMICAL OR OTHER APPLICABLE PRACTICES.

COAL REFUSE DISPOSAL ACTIVITIES – THE STORAGE, DUMPING OR DISPOSAL OF ANY WASTE COAL, ROCK, SHALE, SLURRY, CULM, GOB, BONEY, SLATE, CLAY, UNDERGROUND DEVELOPMENT WASTES, COAL PROCESSING WASTES, EXCESS SOIL AND RELATED MATERIALS, ASSOCIATED WITH OR NEAR A COAL SEAM, THAT ARE EITHER BROUGHT ABOVE GROUND OR OTHERWISE REMOVED FROM A COAL MINE IN THE PROCESS OF MINING COAL OR ARE SEPARATED FROM COAL DURING THE CLEANING OR PREPARATION OPERATIONS. THE TERM SHALL NOT INCLUDE THE REMOVAL OR STORAGE OF OVERBURDEN FROM SURFACE MINING ACTIVITIES.

EXCESS SOIL AND RELATED MATERIAL – ROCK, CLAY OR OTHER MATERIAL LOCATED IMMEDIATELY ABOVE OR BELOW A COAL SEAM AND WHICH ARE

EXTRACTED FROM A COAL MINE DURING THE PROCESS OF MINING COAL. THE TERM DOES NOT INCLUDE TOPSOIL OR SUBSOIL.

POLLUTION ABATEMENT AREA – THE PART OF THE PERMIT AREA THAT IS CAUSING OR CONTRIBUTING TO THE BASELINE POLLUTION LOAD. IT SHALL INCLUDE ADJACENT AND NEARBY AREAS THAT MUST BE AFFECTED TO BRING ABOUT SIGNIFICANT IMPROVEMENTS OF THE BASELINE POLLUTION LOAD AND MAY INCLUDE THE IMMEDIATE LOCATIONS OF THE DISCHARGES.

§ 90.303. APPLICABILITY.

(a) AUTHORIZATION MAY NOT BE GRANTED UNDER THIS SUBCHAPTER UNLESS THE AUTHORIZATION IS PART OF THE FOLLOWING:

(1) A PERMIT ISSUED AFTER FEBRUARY 6, 1995, BUT ONLY IF THE AUTHORIZATION REQUEST IS MADE DURING ONE OF THE FOLLOWING PERIODS:

(i) AT THE TIME OF THE SUBMITTAL OF THE PERMIT APPLICATION FOR THE COAL REFUSE DISPOSAL ACTIVITIES, INCLUDING THE PROPOSED POLLUTION ABATEMENT AREA.

(ii) PRIOR TO A DEPARTMENT DECISION TO ISSUE OR DENY THAT PERMIT.

(2) A PERMIT REVISION UNDER § 86.52 (RELATING TO PERMIT REVISIONS), BUT ONLY IF THE OPERATOR AFFIRMATIVELY DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT THAT:

(i) THE OPERATOR HAS DISCOVERED POLLUTIONAL DISCHARGES WITHIN THE PERMIT AREA THAT CAME INTO EXISTENCE AFTER ITS PERMIT APPLICATION WAS APPROVED.

(ii) THE OPERATOR HAS NOT CAUSED OR CONTRIBUTED TO THE POLLUTIONAL DISCHARGES.

(iii) THE PROPOSED POLLUTION ABATEMENT AREA IS NOT HYDROLOGICALLY CONNECTED TO AN AREA WHERE COAL REFUSE DISPOSAL ACTIVITIES HAVE BEEN CONDUCTED UNDER THE PERMIT.

(iv) THE OPERATOR HAS NOT AFFECTED THE PROPOSED POLLUTION ABATEMENT AREA BY COAL REFUSE DISPOSAL ACTIVITIES.

(v) THE DEPARTMENT HAS NOT GRANTED A BONDING AUTHORIZATION AND MINING APPROVAL FOR THE AREA UNDER § 86.37(b) (RELATING TO CRITERIA FOR PERMIT APPROVAL OR DENIAL).

(b) NOTWITHSTANDING SUBSECTION (a), NO AUTHORIZATION MAY BE GRANTED UNDER THIS SUBCHAPTER FOR REPERMITTING UNDER §§ 86.12 AND 86.14 (RELATING TO CONTINUED OPERATION UNDER INTERIM PERMITS; AND PERMIT APPLICATION FILING DEADLINES), PERMIT RENEWALS UNDER § 86.55 (RELATING TO PERMIT RENEWALS: GENERAL REQUIREMENTS) OR PERMIT TRANSFERS UNDER § 86.56 (RELATING TO TRANSFER OF PERMIT).

§ 90.304. APPLICATION FOR AUTHORIZATION.

(a) AN OPERATOR WHO REQUESTS AUTHORIZATION UNDER THIS SUBCHAPTER SHALL COMPLY WITH THE PERMIT APPLICATION REQUIREMENTS OF CHAPTER 86 (RELATING TO SURFACE AND UNDERGROUND COAL MINING: GENERAL) AND SUBCHAPTERS A – D, EXCEPT AS SPECIFICALLY MODIFIED BY THIS SUBCHAPTER. THE OPERATOR SHALL ALSO:

(1) DELINEATE ON A MAP THE PROPOSED POLLUTION ABATEMENT AREA, INCLUDING THE LOCATION OF THE PREEXISTING DISCHARGES.

(2) PROVIDE A DESCRIPTION OF THE HYDROLOGIC BALANCE FOR THE PROPOSED POLLUTION ABATEMENT AREA THAT INCLUDES:

(i) RESULTS OF A DETAILED WATER QUALITY AND QUANTITY MONITORING PROGRAM, INCLUDING SEASONAL VARIATIONS, VARIATIONS IN RESPONSE TO PRECIPITATION EVENTS AND MODELED BASELINE POLLUTION LOADS USING THIS MONITORING PROGRAM.

(ii) MONITORING FOR pH, ALKALINITY, ACIDITY, TOTAL IRON, TOTAL MANGANESE, ALUMINUM, SULFATES, TOTAL SUSPENDED SOLIDS AND OTHER WATER QUALITY PARAMETERS THE DEPARTMENT DEEMS RELEVANT.

(3) PROVIDE A DESCRIPTION OF THE ABATEMENT PLAN THAT REPRESENTS BEST TECHNOLOGY AND INCLUDES THE FOLLOWING:

(i) PLANS, CROSS-SECTIONS AND SCHEMATIC DRAWINGS DESCRIBING THE ABATEMENT PLAN PROPOSED TO BE IMPLEMENTED.

(ii) A DESCRIPTION AND EXPLANATION OF THE RANGE OF ABATEMENT LEVEL THAT IS ANTICIPATED TO BE ACHIEVED, COSTS AND EACH STEP IN THE PROPOSED ABATEMENT PLAN.

(iii) A DESCRIPTION OF THE STANDARD OF SUCCESS FOR REVEGETATION NECESSARY TO ENSURE SUCCESS OF THE ABATEMENT PLAN.

(b) THE OPERATOR SEEKING THIS AUTHORIZATION SHALL CONTINUE THE WATER QUALITY AND QUANTITY MONITORING PROGRAM REQUIRED BY PARAGRAPH (2) AFTER MAKING THE AUTHORIZATION REQUEST. THE OPERATOR SHALL SUBMIT THE RESULTS OF THIS CONTINUING MONITORING PROGRAM TO THE DEPARTMENT ON A MONTHLY BASIS UNTIL A DECISION ON THE AUTHORIZATION REQUEST IS MADE.

§ 90.305. APPLICATION APPROVAL OR DENIAL.

(a) AUTHORIZATION MAY NOT BE GRANTED UNDER THIS SUBCHAPTER UNLESS THE OPERATOR SEEKING THE AUTHORIZATION AFFIRMATIVELY DEMONSTRATES THE FOLLOWING TO THE SATISFACTION OF THE DEPARTMENT ON THE BASIS OF INFORMATION SET FORTH IN THE APPLICATION:

(1) NEITHER THE OPERATOR, NOR AN OFFICER, PRINCIPAL SHAREHOLDER, AGENT, PARTNER, ASSOCIATE, PARENT CORPORATION, SUBSIDIARY OR AFFILIATE, SISTER CORPORATION, CONTRACTOR OR SUBCONTRACTOR, OR A RELATED PARTY AS DEFINED IN § 86.1 (RELATING TO DEFINITIONS) HAS EITHER OF THE FOLLOWING:

(i) LEGAL RESPONSIBILITY OR LIABILITY AS AN OPERATOR FOR TREATING THE WATER POLLUTION DISCHARGES FROM OR ON THE PROPOSED POLLUTION ABATEMENT AREA.

(ii) STATUTORY RESPONSIBILITY OR LIABILITY FOR RECLAIMING THE PROPOSED POLLUTION ABATEMENT AREA.

(2) THE PROPOSED ABATEMENT PLAN WILL RESULT IN SIGNIFICANT REDUCTION OF THE BASELINE POLLUTION LOAD AND REPRESENTS BEST TECHNOLOGY.

(3) THE LAND WITHIN THE PROPOSED POLLUTION ABATEMENT AREA CAN BE RECLAIMED.

(4) THE COAL REFUSE DISPOSAL ACTIVITIES ON THE PROPOSED POLLUTION ABATEMENT AREA WILL NOT CAUSE ADDITIONAL SURFACE WATER POLLUTION OR GROUNDWATER DEGRADATION.

(5) THE STANDARD OF SUCCESS FOR REVEGETATION WILL BE ACHIEVED. THE STANDARD OF SUCCESS FOR REVEGETATION FOR SITES PREVIOUSLY RECLAIMED TO THE STANDARDS OF CHAPTERS 87, 88 AND 90 SHALL BE THE STANDARDS SET FORTH IN § 90.159 (RELATING TO REVEGETATION: STANDARDS FOR SUCCESSFUL REVEGETATION). THE STANDARD OF SUCCESS FOR REVEGETATION FOR SITES NOT PREVIOUSLY RECLAIMED TO THE STANDARDS OF CHAPTERS 87, 88 AND 90 SHALL BE, AT A MINIMUM, THE FOLLOWING, PROVIDED THE SITE IS NOT A BOND FORFEITURE SITE WHERE THE FORFEITED MONEY PAID INTO THE FUND IS SUFFICIENT TO RECLAIM THE FORFEITED SITE TO THE APPLICABLE STANDARDS:

(i) A GROUND COVER OF LIVING PLANTS NOT LESS THAN CAN BE SUPPORTED BY THE BEST AVAILABLE TOPSOIL OR OTHER SUITABLE MATERIAL IN THE REAFFECTED AREA.

(ii) A GROUND COVER NO LESS THAN THAT EXISTING BEFORE DISTURBANCE OF THE AREA BY COAL REFUSE DISPOSAL ACTIVITIES.

(iii) ADEQUATE VEGETATION TO CONTROL EROSION. VEGETATION MAY BE NO LESS THAN THAT NECESSARY TO ENSURE THE SUCCESS OF THE ABATEMENT PLAN.

(6) THE COAL REFUSE DISPOSAL ACTIVITIES ON PERMITTED AREAS OTHER THAN THE PROPOSED POLLUTION ABATEMENT AREA WILL NOT CAUSE SURFACE WATER POLLUTION OR GROUNDWATER DEGRADATION.

(7) REQUIREMENTS OF § 86.37(a) (RELATING TO CRITERIA FOR PERMIT APPROVAL OR DENIAL) THAT ARE CONSISTENT WITH THIS SECTION HAVE BEEN MET.

(b) AN AUTHORIZATION MAY BE DENIED UNDER THIS SUBCHAPTER IF GRANTING THE AUTHORIZATION WILL, OR IS LIKELY TO, AFFECT A LEGAL RESPONSIBILITY OR LIABILITY UNDER THE CLEAN STREAMS LAW (35 P.S. §§ 691.1 – 691.1001), THE SURFACE MINING CONSERVATION AND RECLAMATION ACT (52 P.S.

§§ 1396.1 – 1396.19a), CHAPTER 86 (RELATING TO SURFACE AND UNDERGROUND COAL MINING; GENERAL) OR SUBCHAPTERS A – D, FOR THE PROPOSED POLLUTION ABATEMENT AREA OR OTHER AREAS OR DISCHARGES IN THE VICINITY OF THE PROPOSED POLLUTION ABATEMENT AREA.

(c) AUTHORIZATION MAY NOT BE GRANTED UNDER THIS SUBCHAPTER UNLESS THERE ARE ONE OR MORE PREEXISTING DISCHARGES FROM OR ON THE POLLUTION ABATEMENT AREA.

(d) THE AUTHORIZATION ALLOWED UNDER THIS SUBCHAPTER IS ONLY FOR THE POLLUTION ABATEMENT AREA AND DOES NOT APPLY TO OTHER AREAS OF THE PERMIT.

§ 90.306. OPERATIONAL REQUIREMENTS.

(a) AN OPERATOR WHO RECEIVES AN AUTHORIZATION UNDER THIS SUBCHAPTER SHALL COMPLY WITH THE REQUIREMENTS OF CHAPTER 86 (RELATING TO SURFACE AND UNDERGROUND COAL MINING: GENERAL) AND SUBCHAPTERS A –D EXCEPT AS SPECIFICALLY MODIFIED BY THIS SUBCHAPTER. THE OPERATOR SHALL ALSO:

(1) IMPLEMENT THE APPROVED WATER QUALITY AND QUANTITY MONITORING PROGRAM FOR THE POLLUTION ABATEMENT AREA UNTIL THE REQUIREMENTS OF § 90.309 (RELATING TO CRITERIA AND SCHEDULE FOR REALEASE OF BONDS ON POLLUTION ABATEMENT AREAS) ARE MET.

(2) IMPLEMENT THE APPROVED ABATEMENT PLAN.

(3) NOTIFY THE DEPARTMENT IMMEDIATELY PRIOR TO THE COMPLETION OF EACH STEP OF THE ABATEMENT PLAN.

(4) PROVIDE A PROGRESS REPORT TO THE DEPARTMENT WITHIN 30 DAYS AFTER THE COMPLETION OF EACH STEP OF THE ABATEMENT PROGRAM THAT INCLUDES A NOTARIZED STATEMENT SIGNED BY THE OPERATOR, AND IF REQUIRED BY THE DEPARTMENT, A STATEMENT SIGNED BY THE SUPERVISING ENGINEER, THAT ALL WORK HAS BEEN PERFORMED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE POLLUTION ABATEMENT AUTHORIZATION, THE APPROVED MAPS, PLANS, PROFILES AND SPECIFICATIONS.

§ 90.307. TREATMENT OF DISCHARGES.

(a) EXCEPT FOR PREEXISTING DISCHARGES THAT ARE NOT ENCOUNTERED DURING COAL REFUSE DISPOSAL ACTIVITIES OR THE IMPLEMENTATION OF THE ABATEMENT PLAN, THE OPERATOR SHALL COMPLY WITH § 90.102 (RELATING TO HYDROLOGIC BALANCE: EFFLUENT STANDARDS).

(b) THE OPERATOR SHALL TREAT THE PREEXISTING DISCHARGES THAT ARE NOT ENCOUNTERED DURING COAL REFUSE DISPOSAL ACTIVITIES OR IMPLEMENTATION OF THE ABATEMENT PLAN TO COMPLY WITH THE EFFLUENT LIMITATIONS ESTABLISHED BY BEST PROFESSIONAL JUDGMENT. THE EFFLUENT LIMITATIONS ESTABLISHED BY BEST PROFESSIONAL JUDGMENT MAY NOT BE LESS THAN THE BASELINE POLLUTION LOAD. IF THE BASELINE POLLUTION LOAD, WHEN EXPRESSED AS A CONCENTRATION FOR A SPECIFIC PARAMETER, SATISFIES THE EFFLUENT LIMITATION AT § 90.102 FOR THAT PARAMETER, THE OPERATOR SHALL TREAT THE PREEXISTING DISCHARGE FOR THAT PARAMETER TO COMPLY WITH EITHER EFFLUENT LIMITATIONS ESTABLISHED BY BEST PROFESSIONAL JUDGMENT OR THE EFFLUENT LIMITATIONS AT § 90.102.

(c) FOR PURPOSES OF SUBSECTIONS (a) AND (b), THE TERM ENCOUNTERED MAY NOT BE CONSTRUED TO MEAN DIVERSIONS OF SURFACE WATER AND SHALLOW GROUNDWATER FLOW FROM AREAS UNDISTURBED BY THE IMPLEMENTATION OF THE ABATEMENT PLAN THAT WOULD OTHERWISE DRAIN INTO THE AFFECTED AREA, AS

LONG AS THE DIVERSIONS ARE DESIGNED, OPERATED AND MAINTAINED UNDER § 90.104 (b) – (h) (RELATING TO HYDROLOGIC BALANCE: DIVERSIONS).

(d) AN OPERATOR REQUIRED TO TREAT PREEXISTING DISCHARGES WILL BE ALLOWED TO DISCONTINUE TREATING THE DISCHARGES UNDER SUBSECTION (b) WHEN THE OPERATOR AFFIRMATIVELY DEMONSTRATES THE FOLLOWING TO THE DEPARTMENT'S SATISFACTION:

(1) THE PREEXISTING DISCHARGES ARE MEETING THE EFFLUENT LIMITATIONS ESTABLISHED BY SUBSECTION (b) AS SHOWN BY GROUNDWATER AND SURFACE WATER MONITORING CONDUCTED BY THE OPERATOR OR THE DEPARTMENT.

(2) COAL REFUSE DISPOSAL ACTIVITIES UNDER THE PERMIT – INCLUDING THE POLLUTION ABATEMENT AREA – ARE BEING OR WERE CONDUCTED UNDER THE REQUIREMENTS OF THE PERMIT AND THE AUTHORIZATION, AND CHAPTER 86 (RELATING TO SURFACE AND UNDERGROUND MINING: GENERAL) AND THIS CHAPTER EXCEPT AS SPECIFICALLY MODIFIED BY THIS SUBCHAPTER.

(3) THE OPERATOR HAS IMPLEMENTED EACH STEP OF THE ABATEMENT PLAN AS APPROVED IN THE AUTHORIZATION.

(4) THE OPERATOR DID NOT CAUSE OR ALLOW ADDITIONAL SURFACE WATER POLLUTION OR GROUNDWATER DEGRADATION BY REAFFECTING THE POLLUTION ABATEMENT AREA.

(e) IF AFTER DISCONTINUANCE OF TREATMENT OF DISCHARGES UNDER SUBSECTION (d) THE DISCHARGES FAIL TO MEET THE EFFLUENT LIMITATIONS ESTABLISHED BY SUBSECTION (b), THE OPERATOR SHALL REINSTITUTE TREATMENT OF THE DISCHARGES UNDER SUBSECTION (b). AN OPERATOR WHO REINSTITUTES TREATMENT UNDER THIS SUBSECTION WILL BE ALLOWED TO DISCONTINUE TREATMENT IF THE REQUIREMENTS OF SUBSECTION (d) ARE MET.

(f) DISCONTINUANCE OF TREATMENT UNDER SUBSECTION (d) MAY NOT BE DEEMED OR CONSTRUED TO BE OR TO AUTHORIZE A RELEASE OF BOND UNDER § 90.309 (RELATING TO CRITERIA AND SCHEDULE FOR RELEASE OF BONDS ON POLLUTION ABATEMENT AREAS).

§ 90.308. REQUEST FOR BOND RELEASE.

SECTIONS 86.172(c) AND 90.309 (RELATING TO CRITERIA FOR RELEASE OF BOND; AND CRITERIA AND SCHEDULE FOR RELEASE OF BONDS ON POLLUTION ABATEMENT AREAS) APPLY TO THE RELEASE OF BONDS FOR POLLUTION ABATEMENT AREAS AUTHORIZED BY THIS SUBCHAPTER. SECTION 86.172(a), (b) AND (d) SHALL NOT BE APPLICABLE TO THE RELEASE OF BONDS.

§ 90.309. CRITERIA AND SCHEDULE FOR RELEASE OF BONDS ON POLLUTION ABATEMENT AREAS.

(a) THE DEPARTMENT WILL RELEASE UP TO 50% OF THE AMOUNT OF BOND FOR THE AUTHORIZED POLLUTION ABATEMENT AREA IF THE APPLICANT DEMONSTRATES AND THE DEPARTMENT FINDS THE FOLLOWING:

(1) THE COAL REFUSE DISPOSAL ACTIVITIES WERE CONDUCTED ON THE PERMIT AREA, INCLUDING THE POLLUTION ABATEMENT AREA, UNDER THE REQUIREMENTS OF THE PERMIT AND THE AUTHORIZATION, CHAPTER 86 (RELATING TO SURFACE AND UNDERGROUND MINING: GENERAL) AND THIS CHAPTER EXCEPT AS SPECIFICALLY MODIFIED BY THIS SUBCHAPTER.

(2) THE OPERATOR HAS SATISFACTORILY COMPLETED BACKFILLING, PLANTING, GRADING, INSTALLING THE WATER IMPERMEABLE COVER AND DRAINAGE CONTROL IN ACCORDANCE WITH THE APPROVED RECLAMATION PLAN.

(3) THE OPERATOR HAS PROPERLY IMPLEMENTED EACH STEP OF THE POLLUTION ABATEMENT PLAN APPROVED AND AUTHORIZED UNDER THIS SUBCHAPTER.

(4) THE OPERATOR HAS NOT CAUSED DEGRADATION OF THE BASELINE POLLUTION LOAD AT ANY TIME DURING THE 6 MONTHS PRIOR TO THE SUBMITTAL OF THE REQUEST FOR BOND RELEASE UNDER THIS SUBSECTION AND UNTIL THE BOND RELEASE IS APPROVED AS SHOWN BY ALL GROUNDWATER AND SURFACE WATER MONITORING CONDUCTED BY THE PERMITTEE UNDER § 90.306(a)(1) (RELATING TO OPERATIONAL REQUIREMENTS) OR CONDUCTED BY THE DEPARTMENT.

(5) THE OPERATOR HAS NOT CAUSED OR CONTRIBUTED TO SURFACE WATER POLLUTION OR GROUNDWATER DEGRADATION BY REAFFECTING THE POLLUTION ABATEMENT AREA.

(b) THE DEPARTMENT WILL RELEASE UP TO AN ADDITIONAL 35% OF THE AMOUNT OF BOND FOR THE AUTHORIZED POLLUTION ABATEMENT AREA BUT RETAIN AN AMOUNT SUFFICIENT TO COVER THE COST TO THE DEPARTMENT OF REESTABLISHING VEGETATION IF COMPLETED BY A THIRD PARTY IF THE OPERATOR DEMONSTRATES AND THE DEPARTMENT FINDS THE FOLLOWING:

(1) THE OPERATOR HAS REPLACED THE TOPSOIL OR MATERIAL CONSERVED UNDER § 90.97 (RELATING TO TOPSOIL: REMOVAL), COMPLETED FINAL GRADING, PLANTING AND ESTABLISHED REVEGETATION UNDER THE APPROVED RECLAMATION PLAN AND ACHIEVED THE STANDARDS OF SUCCESS FOR REVEGETATION IN § 90.305(a)(5) (RELATING TO APPROVAL OR DENIAL).

(2) THE OPERATOR HAS NOT CAUSED OR CONTRIBUTED TO GROUNDWATER OR SURFACE WATER POLLUTION BY REAFFECTING THE POLLUTION ABATEMENT AREA.

(3) THE OPERATOR HAS ACHIEVED THE FOLLOWING STANDARDS:

(i) ACHIEVED THE ACTUAL IMPROVEMENT OF THE BASELINE POLLUTION LOAD DESCRIBED IN THE APPROVED ABATEMENT PLAN AS SHOWN BY GROUNDWATER AND SURFACE WATER MONITORING CONDUCTED BY THE PERMITTEE FOR THE TIME PROVIDED IN THE ABATEMENT PLAN AFTER COMPLETION OF BACKFILLING, FINAL GRADING, DRAINAGE CONTROL, TOPSOILING AND ESTABLISHMENT OF REVEGETATION TO ACHIEVE THE STANDARD FOR SUCCESS IN § 90.305(a)(5).

(ii) ACHIEVED THE FOLLOWING:

(A) AT A MINIMUM HAS NOT CAUSED DEGRADATION OF THE BASELINE POLLUTION LOAD AS SHOWN BY GROUNDWATER AND SURFACE WATER MONITORING CONDUCTED BY THE OPERATOR OR THE DEPARTMENT FOR ONE OF THE FOLLOWING:

(I) FOR A PERIOD OF 12 MONTHS FROM THE DATE OF INITIAL BOND RELEASE UNDER SUBSECTION (a), IF BACKFILLING, FINAL GRADING, DRAINAGE CONTROL, PLACEMENT OF IMPERMEABLE COVER, TOPSOILING AND ESTABLISHMENT OF REVEGETATION TO ACHIEVE THE STANDARD OF SUCCESS FOR REVEGETATION IN § 90.205(a)(5) HAVE BEEN COMPLETED.

(II) IF TREATMENT HAS BEEN INITIATED AT ANY TIME AFTER INITIAL BOND RELEASE UNDER SUBSECTION (a) AND § 90.307(e) (RELATING TO TREATMENT OF DISCHARGES), FOR 12 MONTHS FROM THE DATE OF DISCONTINUANCE OF TREATMENT UNDER § 90.307(d) (RELATING TO TREATMENT OF DISCHARGES), IF BACKFILLING, FINAL GRADING, DRAINAGE CONTROL, PLACEMENT OF IMPERMEABLE COVER, TOPSOILING AND ESTABLISHMENT OF REVEGETATION TO ACHIEVE THE STANDARD OF SUCCESS FOR REVEGETATION IN § 90.305(a)(5) HAVE BEEN COMPLETED.

(B) CONDUCTED ALL THE MEASURES PROVIDED IN THE APPROVED ABATEMENT PLAN AND ADDITIONAL MEASURES SPECIFIED BY THE DEPARTMENT IN WRITING AT THE TIME OF INITIAL BOND RELEASE UNDER SUBSECTION (a) OF THIS SECTION FOR THE AREA REQUESTED FOR BOND RELEASE.

(C) CAUSED AESTHETIC OR OTHER ENVIRONMENTAL IMPROVEMENTS AND THE ELIMINATION OF PUBLIC HEALTH AND SAFETY PROBLEMS BY ENGAGING IN COAL REFUSE DISPOSAL ACTIVITIES AND REAFFECTING THE POLLUTION ABATEMENT AREA.

(D) STABILIZED THE POLLUTION ABATEMENT AREA.

(c) THE DEPARTMENT WILL RELEASE THE REMAINING PORTION OF THE AMOUNT OF BOND ON THE AUTHORIZED POLLUTION ABATEMENT AREA IF THE OPERATOR DEMONSTRATES AND THE DEPARTMENT FINDS THE FOLLOWING:

(1) THE OPERATOR HAS SUCCESSFULLY COMPLETED THE APPROVED ABATEMENT AND RECLAMATION PLANS, AND THE POLLUTION ABATEMENT AREA IS CAPABLE OF SUPPORTING THE POSTDISPOSAL LAND USE APPROVED UNDER § 90.166 (RELATING TO POSTDISPOSAL LAND USE).

(2) THE OPERATOR HAS COMPLIED WITH THE PERMIT AND THE AUTHORIZATION, CHAPTER 86 AND THIS CHAPTER, EXCEPT AS SPECIFICALLY MODIFIED BY THIS SUBCHAPTER.

(3) THE OPERATOR HAS NOT CAUSED DEGRADATION OF THE BASELINE POLLUTION LOAD FROM THE TIME OF BOND RELEASE UNDER SUBSECTION (b) OF THIS SECTION OR, IF TREATMENT HAS BEEN INITIATED AFTER BOND RELEASE UNDER SUBSECTION (b) OF THIS SECTION IN ACCORDANCE WITH § 90.307(e) FOR 5 YEARS FROM THE DISCONTINUANCE OF TREATMENT UNDER § 90.307(d).

(4) THE APPLICABLE LIABILITY PERIOD HAS EXPIRED UNDER § 86.151 (RELATING TO PERIOD OF LIABILITY).

SUBCHAPTER G. EXPERIMENTAL PRACTICES

§ 90.401. GENERAL.

(a) IN ORDER TO ENCOURAGE ADVANCES IN COAL REFUSE DISPOSAL PRACTICES, COAL REFUSE SITE RECLAMATION, AND ADVANCES IN TECHNOLOGY OR PRACTICES THAT WILL ENHANCE ENVIRONMENTAL PROTECTION WITH RESPECT TO COAL REFUSE DISPOSAL ACTIVITIES, THE DEPARTMENT MAY GRANT PERMITS APPROVING EXPERIMENTAL PRACTICES AND DEMONSTRATION PROJECTS. THE DEPARTMENT MAY GRANT SUCH PERMITS UNDER THE FOLLOWING CIRCUMSTANCES:

(1) THE ENVIRONMENTAL PROTECTION PROVIDED WILL BE POTENTIALLY MORE PROTECTIVE OR AT LEAST AS PROTECTIVE AS REQUIRED BY THIS CHAPTER, THE COAL REFUSE DISPOSAL CONTROL ACT, AND CHAPTER 86.

(2) THE COAL REFUSE DISPOSAL ACTIVITIES APPROVED UNDER THE PERMITS ARE NOT LARGER OR MORE NUMEROUS THAN NECESSARY TO DETERMINE THE EFFECTIVENESS AND ECONOMIC FEASIBILITY OF THE EXPERIMENTAL PRACTICES OR DEMONSTRATION PROJECTS.

(3) THE EXPERIMENTAL PRACTICES OR DEMONSTRATION PROJECTS DO NOT REDUCE THE PROTECTION AFFORDED PUBLIC HEALTH AND SAFETY BELOW THAT PROVIDED BY THIS CHAPTER, THE COAL REFUSE DISPOSAL CONTROL ACT, AND CHAPTER 86.

(b) EXPERIMENTAL PRACTICE PERMITS ISSUED UNDER THIS SUBCHAPTER SHALL MEET ALL THE PROVISIONS, STANDARDS, AND INFORMATION REQUIREMENTS OF THE FEDERAL 30 CFR PART 785, SECTION 785.13 (RELATING TO EXPERIMENTAL PRACTICES MINING).

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
May 31, 2000

The Secretary **717-787-2814**

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown II
Harrisburg, PA 17101

RE: Proposed Rulemaking: Coal Refuse Disposal Activities (#7-352)

Dear Bob:

Enclosed is a copy of a proposed regulation for review and comment by the Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on June 17, 2000, with a 60-day public comment period and two public hearings. A public notice of the hearings is attached. This proposal was approved by the Environmental Quality Board (EQB) on April 18, 2000.

This proposal updates existing regulations in Chapters 88 and 90 by incorporating provisions of the Coal Refuse Disposal Control Act as amended by Act 114 of 1994. The proposal incorporates new provisions and requirements relating to selection of sites for coal refuse disposal activities; activities conducted within 100 feet of a stream; special water quality standards and other incentives designed to promote the use and reclamation of previously mined areas; experimental practices for environmental protection; and upgraded surface water and groundwater management systems. The proposal adds language in Chapter 90 that cross-references the water supply replacement provisions of the current surface mining regulations. The proposal also consolidates the requirements for permitting and operating a coal refuse disposal activity into Chapters 88 and 90. These requirements currently exist in statute, regulations, and technical guidance pertaining to site selection.

The Mining and Reclamation Advisory Board (MRAB) reviewed drafts of the proposal at meetings in November 1999 and January 2000 and recommended approval of the proposed rulemaking on January 6, 2000.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Act provides that the Commission may, within ten days after the expiration of the Committee review period, notify the agency of any objections to the proposed regulation. The Department will consider any comments or suggestions received by the Commission, together with Committee and other public comments prior to final adoption.

For additional information, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,

James M. Seif
Secretary

Enclosures

ENVIRONMENTAL QUALITY BOARD
NOTICE OF PUBLIC HEARINGS

Proposed Rulemaking – Coal Refuse Disposal Activities

Notice is hereby given by the Environmental Quality Board (EQB) of two public hearings on proposed amendments to Pennsylvania's regulations pertaining to coal refuse disposal activities.

This proposal updates existing regulations in 25 *Pennsylvania Code* Chapters 88 and 90 by incorporating provisions of the Coal Refuse Disposal Control Act as amended by Act 114 of 1994. The proposal incorporates new provisions and requirements relating to selection of sites for coal refuse disposal activities; activities conducted within 100 feet of a stream; special water quality standards and other incentives designed to promote the use and reclamation of previously mined areas; experimental practices for environmental protection; and upgraded surface water and groundwater management systems. The proposal adds language in Chapter 90 that cross-references the water supply replacement provisions of the current surface mining regulations. The proposal also consolidates the requirements for permitting and operating a coal refuse disposal activity into Chapters 88 and 90. These requirements currently exist in statute, regulations and technical guidance pertaining to site selection.

The EQB will hold two public hearings to accept comments on the proposed amendments. The hearings will be held at 7:00 p.m. as follows:

July 19, 2000	Quality Hotel 100 South Centre Street Pottsville, Pa.
July 26, 2000	Days Inn 127 West Byers Avenue I-70 & Turnpike Exit 8 New Stanton, Pa.

Persons wishing to present testimony at either of the hearings are requested to contact Joan Martin at the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their testimony to the hearing chairperson.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Joan Martin at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD), to discuss how their needs may be accommodated.

In lieu of or in addition to presenting oral testimony at the hearings, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments must be received by August 16, 2000. Comments submitted by facsimile will not be accepted. Electronic comments may be submitted to RegComments@dep.state.pa.us. In addition to written or electronic comments, interested persons may submit a summary of their comments to the EQB. The summary cannot exceed one page in length and must also be received by August 16, 2000. The one-page summary will be provided to each member of the EQB in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Copies of this proposal are available from the Bureau of Mining and Reclamation, Department of Environmental Protection, P.O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5103, or e-mail at callaghan.thomas@dep.state.pa.us. This proposal is also available on the DEP Website at http://www.dep.state.pa.us (choose Public Participation/Proposals Open for Comment).

JAMES M. SEIF
Chairman

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

RECEIVED
2000 MAY 31 PM 3:55
REVIEW COMMISSION

I.D. NUMBER:	7-352
SUBJECT:	Coal Refuse Disposal
AGENCY:	DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5/31/00		HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
5-31-00		SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
5-31-00		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
5/31/00		LEGISLATIVE REFERENCE BUREAU

May 16, 2000