Regulatory Analysis Form

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(1) Agency

Environmental Protection

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

#7-401

IRRC Number: 2557

(3) Short Title

Coal Mine Reclamation Fees and Reclamation of Bond Forfeiture Sites

(4) PA Code Cite

25 Pa. Code

Chapter 86

(5) Agency Contacts & Telephone Numbers

Primary Contact: Marjorie L. Hughes, 783-8727

Secondary Contact: Michele Tate, 783-8727

(6) Type of Rulemaking (Check One)

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

(6) 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.

These regulations amend existing provisions relating to reclamation fees and to requirements for the reclamation of coal mined lands where the bonds had been forfeited. The reclamation fees required by § 86.17(e) have been used to supplement bonds for surface coal mine permits issued under an Alternate Bonding System (ABS). The Department has converted from the ABS to a Conventional Bonding System (CBS) providing for full-cost bonding and consequently negating the need to continue to collect the reclamation fees to supplement bonds. This rulemaking proposes discontinuing the collection of those fees. The requirements for the reclamation of mined sites where the bonds had been forfeited are proposed for revision to require that an alternative reclamation plan for those mined sites provide for restoration to conditions for supporting either the uses the mined lands were capable of supporting before any mining or a higher or better use.

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

Section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4b(a)), § 5 of the Clean Streams Law (52 P.S. § 691.5) and § 1920-A of the Administrative Code of 1929 (71 P.S. § 510.20).

(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.

The proposed amendments relating to the reclamation fees are indirectly a result of the Federal Office of Surface Mining (OSM) providing notice to the Department under 30 CFR 732.17 that Pennsylvania's ABS was no longer in conformance with § 509 of the Federal Surface Mining Control and Reclamation Act (Federal SMCRA) and the federal regulations of 30 CFR 800.11(e). In addition, a citizen's suit was filed in U.S. District Court under § 520 of Federal SMCRA against the Department and OSM alleging failure by both agencies to comply with Federal SMCRA mandates for maintaining an adequate bonding program in Pennsylvania. The Department's conversion from an ABS to a CBS fulfills the federal mandates and, as a result, eliminated the need to continue to collect reclamation fees. The proposed amendments relating to reclamation of coal mined lands where the bonds were forfeited are being made to satisfy primacy conditions under Federal SMCRA as identified in 30 CFR 938.16(mm) – (qq) so Pennsylvania's regulations are consistent with and no more stringent that federal requirements.

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

The current regulations for collection of reclamation fees are unnecessary because they are not consistent with the Department's current bonding system. It is inappropriate for the Department to continue to collect reclamation fees to supplement bonds when the bonds are adequate to cover the full-cost of reclamation. The current regulations relating to reclamation of coal mined lands where bonds were forfeited need amending for consistency with federal requirements.

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

Non-regulation is not an option for the Commonwealth of Pennsylvania to continue to maintain primary jurisdiction under the federal Surface Mining Control and Reclamation Act.

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

Pennsylvania's 500 coal mine operators will benefit from these amendments by no longer needing to pay the $ 100 per acre reclamation fee required by § 86.17(e) for areas proposed for conducting coal mining activities. Owners of coal mined lands where the bonds have been forfeited and alternate reclamation plans approved will benefit by having their land restored to conditions for supporting the uses the mined land was capable of supporting prior to the mining or to a higher or better use.

Regulatory Analysis Form

(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 amended regulations are not expected to result in any adverse impacts upon the regulated community or the public.

(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.)

Approximately 500 coal mine operators will be affected by these amendment.

(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 Mining and Reclamation Advisory Board (MRAB) provided input in the development of the amended regulations. The MRAB is the Department's advisory board for the purpose of developing coal mining regulations. A draft of the proposed rulemaking was reviewed and discussed with the MRAB at its meeting on April 28, 2005. The Federal OSM was involved in the process of the Department converting from the ABS to CBS inherent of which was the proposal to eliminate the reclamation fees. The Federal OSM was also provided with an informal program amendment containing the proposed amendments to these regulations.

(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.

Surface coal mine operators will experience a total annual cost savings of approximately $ 110,200 by no longer needing to pay the $ 100 per acre reclamation fee. These savings are described in more detail in Section 20a.

(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.

The proposed amendments are not expected to impose any additional costs or savings to local government.

(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 amendments are not expected to impose any additional costs to state government. A minimal savings to state government of approximately $ 130 per year would be anticipated based on staff time no longer being needed to process the receipt of the reclamation fees. These savings are described in more detail in Section 20a. There would be no revenue losses to state government because discontinuing collection of the $ 100 per acre reclamation fee would be offset by the increases in bond amounts and the additional monies available for reclamation should the bonds be forfeited.

Regulatory Analysis Form

(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	0	110,200	110,200	110,200	110,200	110,200
Local Government	0	0	0	0	0	0
State Governments	0	130	130	130	130	130
Total Savings	0	110,330	110,330	110,330	110,330	110,330
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Governments	0	0	0	0	0	0
Total Cost	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Governments	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

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

Any cost savings to the regulated community in conjunction with discontinuing collection of the $ 100 per acre reclamation fee needs to evaluated in the context of the Department's overall bonding system. The Department's conversion of active surface coal mine permits from the alternate bonding system to the conventional (i.e. full cost) bonding system resulted in 35 % of the permits with decreased total bond amounts, 10 % with total bond amounts remaining the same and 55 % with increased total bond amounts. Those permits that either had a decrease in total bond amounts or the total bond amounts remained the same would realize a cost savings by not needing to pay the $ 100 per acre reclamation fee. Those permits that had an increase in the total bond amounts would generally realize less of a cost savings. Assuming the active permits that had gone through the conversion from the alternate bonding system to conventional bonding are representative of new permits issued, then 45 % (i.e. 10 % plus 35 %) of the new permits would realize a cost savings by not needing to pay the $ 100 per acre reclamation fee and the remaining 55 % may have some cost savings.

During the period between May 2004 and May 2005, there were 66 surface coal mine permits issued with total authorized acres for mining of 2,483. The average number of acres authorized for mining for those permits was 38. If 45 % of the 66 permits averaging 38 acres authorized for mining would no longer require the $ 100 per acre reclamation fee, the cost savings per permit would be $ 3,800 (i.e. $ 100 per acre x 38 acres per permit) or a total annual cost savings of $ 110,200 (i.e. 45% of 55 permits = 29 permits x $ 4,100 per permit). The remaining 55 % of the 52 permits may have some costs saving.

The minimal cost savings to state government results from a reduction in Department staff time necessary to process receipt of the reclamation fees. The total annual cost savings is estimated at $ 130 ($10 per hour x 13 total hours per year).

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

Program	FY-3	FY-2	FY-1	Current FY
General Government Operations	20,256,000	22,171,000	17,384,000	18,262,000
Environmental Program Mgt.	43,780,000	43,679,000	31,839,000	37,049,000
Environmental Protection Operations	75,559,000	76,393,000	81,951,000	87,897,000

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

A sector of the regulated community and the Department will experience some cost savings. A sector of the regulated community may experience increased costs. Those costs are discussed in Sections 19 and 20. Any increased costs that may occur to the regulated community will be offset by the benefits to the Commonwealth of having sufficient monies to reclaim disturbed lands for mining permits where the mine operator defaulted on the reclamation and the bonds were forfeited.

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

No nonregulatory alternatives were considered. Pennsylvania's regulations must be as effective as federal regulations in order to maintain primary jurisdiction over coal mining under the Federal Surface Mining Control and Reclamation Act.

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

An alternative regulatory scheme considered involved continuing the alternative bonding system and increasing the $ 100 per acre reclamation fee. That scheme was dismissed because the Department had increased the reclamation fee under the alternative bonding system from $ 50 per acre to $ 100 per acre and the system remained fiscally insolvent. With the continued decline in the number of acres permitted for mining resulting in a decrease in the total reclamation fees along with the increased costs to reclaim land disturbed by mining, the Department made a decision to convert to conventional or full cost bonding and no longer be dependent upon reclamation fees to supplement the monies received when the bonds were forfeited.

(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 amendments to the regulations are no more stringent than federal requirements.

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

States having coal mining must maintain a coal mining regulatory program that conforms with federal requirements. States that do not maintain such a program are regulated directly under the Federal Surface Mining Control and Reclamation Act. As a result, these regulations are expected to be no more stringent than those of other states with coal mining.

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

These regulations amend existing Department regulations and will not affect existing or proposed regulations of other state agencies.

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

No public hearings or informational meetings are scheduled.

(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.

The amendments will change existing paperwork requirements by eliminating the need for record keeping associated with processing receipt of reclamation fees.

(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.

The amendments must conform with federal requirements and no special provisions have been developed beyond what are afforded in federal regulations.

(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 regulations will go into effect upon publication in the Pennsylvania Bulletin as final rulemaking. Publication is anticipated during calendar year 2006. No new permits, licenses or other approvals will be required by these regulations.

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

The regulations will be revised, as needed, in accordance with the Sunset Review Schedule published by the Department.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to form and legality. Attorney General

By: Amy M. Elliott
(Deputy Attorney General)

JUL 17 2006

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-401

DATE OF ADOPTION May 17, 2006

BY Kathleen A McGinty

TITLE KATHLEEN A MCGINTY
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY

JUN 2 2006

DATE OF APPROVAL

Andrew C. Clark
(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 Mine Reclamation Fees and Reclamation of Bond Forfeiture Sites

25 *Pa. Code* Chapter 86

Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 Pa. Code Chapters 86
Coal Mine Reclamation Fees and Reclamation of Bond Forfeiture Sites

Preamble

The Environmental Quality Board (Board) proposes to amend Chapter 86 (relating to anthracite and bituminous surface mining and coal refuse disposal) to read as set forth in Annex A. The proposed amendments address the coal mine reclamation fees paid by surface coal mine operators and the requirements for reclamation of coal mine sites where the mine operator's bonds were forfeited by the Department.

This proposal was adopted by the Board at its meeting of May 17, 2006.

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 Joseph G. Pizarchik, Director, Bureau of Mining and Reclamation, P.O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103, or Richard Morrison, 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) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed 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 Section 4.2 of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P.S. § 1396.4b(a)); and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).

D. Background and Purpose

Under Pennsylvania and pertinent federal law, the Department has the authority to establish one of two basic types of bonding programs in order to provide financial assurance that surface coal mining operations are properly reclaimed. *See* 52 P.S. § 1396.4(d); 30 U.S.C. §§ 1259(a), (c). The two types are known as conventional and alternative bonding. The conventional bonding system requires that the mine operator post a bond sufficient in amount to assure completion of the mine site's reclamation plan if the work has to be performed by the

Department in the event of a forfeiture. An alternative bonding system has no specific requirements for individual bond amounts but it must achieve the objectives of the bond program. From about 1982 until 2001, Pennsylvania maintained an alternative bonding system for surface coal mines in which a central pool of money to be used for reclamation was funded in part by a per-acre reclamation fee paid by operators of permitted sites. Operators were also required to post bonds for the site but they were not required to post a bond sufficient in amount to cover the full cost of performing reclamation of the mine site.

The amendment regarding the reclamation fees is proposed as a result of changes the Department made in the coal bonding program. The Department's Alternative Bonding System (ABS) was intended to enable the Department to complete reclamation of forfeited mine sites notwithstanding that the actual cost of reclamation exceeded the amount of the individual bonds posted by the operator for a specific site. The reclamation fee was paid on a per acre basis for each acre to be affected by the surface mine operator. The fee was assessed at $50 per acre. The fees were deposited in the Surface Mining Conservation and Reclamation Act Fund and were used to supplement a mine operator's bond to cover the Department's costs to reclaim the mine site when the mine operator defaulted on the reclamation obligations.

In 1991, the Federal Office of Surface Mining (OSM) notified the Department under the authority at 30 CFR 732.17 that, in order to maintain primacy of Pennsylvania's regulatory program under the Federal Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201 *et seq.*, the Department had to adopt changes to its bonding system to address program deficiencies and outstanding reclamation on forfeited bond sites. One change the Department made was to increase the $50 per acre reclamation fee to $100 per acre.

In the mid 1990s it became apparent that the doubling of the per acre reclamation fee would not generate sufficient funds to eliminate the ABS deficit. In fact, the Department concluded that if changes were not made the deficit would only get worse. The situation would worsen because of a decline in the number of acres being permitted with a corresponding reduction in income from the per acre reclamation fee. Furthermore, there were a number of old permits with post mining discharges that were under bonded that were potential bond forfeitures

Recognizing that the ABS would never address the situation, the Department began efforts to require full cost bonding for post mining discharges. The Department also began to plan for, and started down the long process of converting to full cost bonding. In 1999, a citizen's suit was filed in Federal District Court against the Department and OSM alleging the ABS did not meet the objectives and purposes of the Federal Surface Mining Control and Reclamation Act. The Department continued with its efforts, phased out the ABS and converted to a Conventional Bonding System (CBS). In 2001, the Department began converting all active surface coal mining permits issued under the ABS to the CBS. Under the CBS, a permittee must post bonds in an amount sufficient to cover the Department's estimated cost to complete reclamation in the event of bond forfeiture. As part of the effort to address the ABS inadequacies through conversion to the CBS, the Department made a commitment with the industry for elimination of the per acre reclamation fee upon completion of the conversion. The Department has essentially completed the conversion from the ABS to the CBS, and termination of the reclamation fee is now appropriate.

The amendments to the bond forfeiture regulations in 86.187, 86.188, 86.189 and 86.190 are proposed to make these regulations consistent with Federal regulations. These amendments are necessary to satisfy conditions for maintaining the primacy of Pennsylvania's regulatory program. OSM disapproved certain aspects of these regulations, and required amendments to make those regulations as affects as, and not inconsistent with, federal law. *See* 56 FR 55080 (Oct. 24, 1991); 30 CFR §§ 938.16(mm) to (qq). The proposed changes to these regulations will satisfy the required changes identified in 30 CFR 938.16(mm)-(qq).

These proposed regulatory changes were reviewed and discussed with the Mining and Reclamation Advisory Board (MRAB), which is the Department's advisory body for regulations pertaining to the surface mining of coal. A draft of the proposed rulemaking was reviewed and discussed with the MRAB at its meeting on April 28, 2005. The MRAB endorsed the proposed rulemaking.

E. Summary of Regulatory Requirements

The following Sections are proposed for change along with a description of the specific change.

§ 86.17(e) Reclamation Fees.

This subsection is being revised to discontinue collection of the $100 per acre reclamation fee, which was part of the prior ABS, because the Department has changed to a CBS.

§ 86.187(a)(1) Money received from the fees

This subsection is being revised to correct a typographical error. Reference was improperly made to § 86.17(b). The correction results in the proper reference to § 86.17(e).

§ 86.187(b) Reclamation of bond forfeiture sites

This subsection is being revised to make clear that an alternative reclamation plan must meet applicable performance standards in § 86.189(c) and to reflect that the Department will notify and consult with the landowner prior to expending funds for reclamation of a bond forfeiture site in all cases and not just when an alternative reclamation plan is being considered. This amendment is incorporated to satisfy the federal requirements in 30 CFR §§ 938.16(mm).

§ 86.187(c) and 86.189(c)(2)-(c)(5) Alternate reclamation plans for bond forfeiture sites.

These subsections are being revised to delete language regarding alternate reclamation plans for bond forfeiture sites allowing the sites to be made suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation. Subsection 86.187(c) is revised further by adding language requiring the alternate reclamation plans provide for restoration of the disturbed land to conditions that are capable of supporting either the uses they were capable

of supporting before any mining, or higher or better uses. Paragraphs (c)(2), (c)(3) and (c)(4) are being revised to delete the reference to paragraph (c)(5) which is being deleted because Federal regulations at 30 CFR 816.133(a) and 817.133(a) require that all disturbed areas be restored to uses they were capable of supporting before any mining, or to higher or better uses. These amendments are designed to satisfy the federal requirements at 30 CFR §§ 938.16(mm), (nn) and (oo).

§ 86.188(b) and (c) Evaluation of bond forfeiture sites.

Paragraph (b)(5) is proposed for deletion in order to make clear that bond forfeiture funds posted for and still needed to complete reclamation of the specific site for which the bonds were forfeited will not be used for reclamation of other sites until reclamation of the forfeited site has been completed. Paragraph (c)(3) is proposed for deletion so as to remove any doubt that the Department fully intends to maintain adequate bonding so as to have funds available for completion of reclamation should the bonds be forfeited. These changes are proposed to address concerns expressed by OSM in the final rule disapproving certain aspects of these regulations. *See* 56 FR 55080 (section III (3)(e)).

§ 86.190(a) Bond forfeiture sites where reclamation is unreasonable, unnecessary or impossible.

Subsection (a) is being revised to delete language that allows for additional reasons to justify determinations that reclamation of bond forfeiture sites is unreasonable, unnecessary or physically impossible beyond those reasons specifically listed in subsection (a). Paragraph (a)(3) is proposed for deletion because it allows the landowner of a bond forfeiture site to prevent reclamation. These amendments are incorporated to satisfy the federal requirements in 30 CFR §§ 938.16(pp) and (qq).

§ 86.283(c) Reclamation fees for remining areas

The proposed change to this subsection removes a requirement relating to the per acre reclamation fees for remining areas for mine operators approved to participate in the financial guarantees program. This change is proposed for consistency with the change proposed in Section 86.17(e).

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulation.

Compliance Costs

The proposed changes will reduce compliance costs on the regulated community by eliminating the $100 per acre reclamation fee.

Compliance Assistance Plan

The Department will provide written notification of the changes to the coal mining industry.

G. Pollution Prevention

The rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multi-media pollution prevention approach of existing requirements in 25 Pa. Code Chapter 86.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on _____, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC), and the Chairpersons 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.

Under Section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review 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 final-form regulations.

J. Public Comments

Written Comments - Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments 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 submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by _____ (within 30 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 _____. 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@state.pa.us and must also be received by the Board by _____. 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 2 working days, the comments should be retransmitted to ensure receipt.

KATHLEEN A. MCGINTY
Chairperson
Environmental Quality Board

ANNEX A
TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUBPART C. PROTECTION OF NATURAL RESOURCES
ARTICLE I. LAND RESOURCES
CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

SUBCHAPTER B. PERMITS
GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

§ 86.17. Permit and reclamation fees.

(a) A permit application for coal mining activities shall be accompanied by a check for $250 payable to the ''Commonwealth of Pennsylvania.''

(b) A permit application for a coal preparation plant shall be accompanied by a check for $250 payable to the ''Commonwealth of Pennsylvania.''

(c) A renewal application, whether the site has not yet been activated or where coal is being extracted, shall be accompanied by a check for $250 payable to the ''Commonwealth of Pennsylvania.'' A renewal application for reclamation activities requires no application fee.

(d) A permit application for coal refuse disposal activities shall be accompanied by a check for $500 plus $10 per acre for acreage in excess of 50 acres payable to the ''Commonwealth of Pennsylvania.''

(e) In addition to the bond established under § § 86.145, 86.149 and 86.150 (relating to Department responsibilities; determination of bond amount; and minimum amount), there is a $100 per acre reclamation fee for surface mining activities except for the surface effects of underground mining. This reclamation fee may be paid as acreage within an approved surface mining permit is authorized for mining. The reclamation fee will be deposited in the Surface Mining Conservation and Reclamation Fund as a supplement to forfeited bonds. The reclamation fee shall only be used for reclaiming mining operations which have defaulted on their obligation to reclaim. **The fee required by this subsection shall not be required after (effective date of this rulemaking).**

SUBCHAPTER F. BONDING AND INSURANCE REQUIREMENTS
BOND FORFEITURE

§ 86.187. Use of money.

(a) Moneys received from fees, fines, penalties, bond forfeitures and other monies received under authority of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.31), and interest earned on the moneys, will be deposited in the Fund.

(1) Moneys received from the fees required by § 86.17**[b]**<u>**(e)**</u> (relating to permit and reclamation fees), and interest accrued on these monies, will be used only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds, as a supplement to bond forfeiture funds.

(2) Moneys received from the forfeiture of bonds will be used only to reclaim land and restore water supplies affected by the surface mining operation upon which liability was charged on the bond, except as otherwise provided in § 86.190 (relating to sites where reclamation is unreasonable, unnecessary or impossible; excess funds). Interest accrued on these monies will be used only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds, as a supplement to bond forfeiture funds.

(3) Other moneys deposited in the Fund may be used to reclaim land affected by surface mining operations and for other conservation purposes consistent with the purposes of the Fund, including restoration of water supplies affected by surface mining operations. The Department may also use the money in the Fund, other than the monies described in paragraphs (1) and (2), for necessary administrative expenses, including the purchase, lease or rental of vehicles, equipment, office space, laboratory supplies or other supplies, materials or services and personnel and overhead expenses.

(b) The Department<u>**, after notifying and consulting with the landowner,**</u> will expend the funds to reclaim the land affected by the operation in such a manner as to complete the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site <u>**or an alternative reclamation plan completed pursuant to subsection (c)**</u>**.** The Department, **[after notifying and consulting with the landowner,]** will expend the funds to reclaim the land affected by the operation in such a manner as to complete **[a]** <u>**an alternative**</u> reclamation plan in compliance with subsection (c) if either of the following apply:

(1) After considering the engineering cost estimate for completion of the approved reclamation plan of the licensed mine operator whose bonds were

forfeited for the reclamation site, the Department determines that the plan may be amended to decrease the cost of reclaiming the bond forfeiture site.

(2) The Department determines that completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site is unreasonable, unnecessary or physically impossible.

(c) If the Department determines under subsection (b) that an alternative to the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site should be implemented, the Department will prepare and implement a plan **[that makes the bond forfeiture site suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation.]** **that complies with all applicable performance standards in accordance with §§ 86.189(c)(2), 86.189(c)(3) or 86.189(c)(4), whichever is appropriate, and that ensures that all disturbed areas are restored to conditions that are capable of supporting either the uses they were capable of supporting before any mining, or higher or better uses.**

§ 86.188. Evaluation of bond forfeiture sites.

(a) After forfeiture of bond under § § 86.180—86.182 and 86.185 (relating to scope; general; procedures; and preservation of remedies) has become final and the bond proceeds have been collected, the Department will evaluate the bond forfeiture site for reclamation purposes. The evaluation will consist of an onsite inspection by the Department and solicitation of information regarding the site and reclamation intention of the landowner and others determined by the Department to have information on, or an interest in, the site. The Department will provide to the landowner of the site, upon request, a copy of the completed site evaluation report.

(b) The Department will prioritize a bond forfeiture site according to the following categories, which are listed in decreasing order of severity of condition:

(1) Sites which present a significant and continuing hazard to human life by either their proximity to or impact on human populations.

(2) Sites which present a significant threat to health or safety, including actual or threatened loss of public or private water supplies.

(3) Sites which present a significant risk of damage to public or private property.

(4) Sites which are causing environmental degradation or pollution affecting the productive use of public or private land, or the reclamation of which would create significant environmental benefits.

[(5) Other sites which need reclamation.]

(c) The Department, in selecting sites for reclamation under § 86.189(b)(1) (relating to reclamation of bond forfeiture sites), will consider the following factors:

(1) The severity of the conditions at the site.

(2) The potential for conditions at the site to deteriorate, including environmental quality, thus increasing the hazard to life, health, safety or property.

[(3) The availability of funds to accomplish the required reclamation of the site, or that portion of the site which is threatening life, health, safety, other property or the environment.]

[4] (3) The willingness of the landowner, or other person, to undertake the reclamation of the site under § 86.189(b)(2), (3) or (4), as evidenced by previous reclamation activity performed on the site or other indications of willingness to reclaim by the landowner or other person.

[5] (4) The ability of the Department to gain adequate access to the site.

[6] (5) The potential for remining of all or a portion of the site.

[7] (6) The lack of participation of the landowner in the surface mining activities which created the conditions at the site.

[8] (7) The potential for agricultural use or reforestation of the site.

(d) The Department will compile a list of sites for which forfeiture of bonds under § § 86.180—86.182 and 86.185 has become final and bond proceeds have been collected. The list will be updated quarterly and will be available for review in the Department's district and central offices. The Department will publish quarterly in the *Pennsylvania Bulletin* notice of the availability of this list for review.

§ 86.189. Reclamation of bond forfeiture sites.

(a) The Department will first provide for the reclamation of bond forfeiture sites where permits were issued under the Federally-approved coal surface mining regulatory program which took effect July 31, 1982, and where bonds under the permits were subsequently forfeited by the Department. After the Department provides for reclamation of these sites, the Department will provide for the reclamation of other bond forfeiture sites.

(b) The Department will provide for reclamation of bond forfeiture sites through one of the following:

(1) The Department may provide for reclamation to be conducted under the public bidding and contracting requirements of the Commonwealth under the site evaluation procedure in § 86.188 (relating to evaluation of bond forfeiture sites). Under this approach, the Department will advertise for bids for reclamation of the bond forfeiture site in a newspaper of general circulation in the locality in which the work is to take place. The advertisement will appear once a week for a minimum of 2-consecutive weeks. In advertising for bids, the Department may consider various construction methods for bidding, including the rental of equipment with equipment operators to be supervised by the Department during completion of the reclamation plan.

(2) Based on an engineering cost estimate for completing the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site, the Department may negotiate and enter into a contract with the landowner of a bond forfeiture site or another licensed mine operator to complete the reclamation of a bond forfeiture site advertised for bids under paragraph (1). The Department will give public notice of the intent to reclaim sites selected by the Department to be advertised for public bids under paragraph (1) in a newspaper of general circulation in the locality in which the work is to take place. The public notice will appear once a week for a minimum of 2 consecutive weeks and may be combined with the notice in paragraph (1). Payments to a person to whom the Department has granted a contract under this paragraph will be made to the extent of the appropriate compensation provisions according to a payment schedule to be established by the Department. The final payment will be made when the Department is satisfied that the person has completed reclamation of the site in accordance with the approved reclamation plan and as specified in the contract.

(i) The Department will compensate landowners of bond forfeiture sites at a rate equal to the lesser of one of the following:

(A) The Department's engineering cost estimate for the site.

(B) The prevailing bond rate.

(ii) The Department will compensate licensed mine operators at a rate equal to the lesser of one of the following:

(A) The Department's engineering cost estimate for the site.

(B) The prevailing bond rate.

(3) When a licensed mine operator is granted a permit or has filed a permit application on property contiguous to a property on which the Department has forfeited bonds for failure to complete the reclamation plan, the permittee shall be provided the opportunity to make a proposal to complete the reclamation plan of the bond forfeiture site developed under § 86.187 (relating to use of money).

(i) The proposal shall contain estimated costs and the necessary information upon which the Department can determine the cost effectiveness of the proposal. Upon receipt of the proposal, the Department may negotiate and enter into a contract with the permittee to complete the reclamation plan. A determination whether to negotiate will be made by the Department within 30 days of receipt of a complete proposal. Contract negotiations will begin within 30 days of the determination to negotiate.

(ii) Payments to a person with whom the Department has entered into a contract under this paragraph will be made to the extent of the appropriate compensation provisions according to a payment schedule to be established by the Department, and the final payment will be made when the Department is satisfied that the person has completed reclamation of the site in accordance with the approved reclamation plan and as specified in the contract. The Department will compensate licensed mine operators at a rate equal to the lesser of one of the following:

(A) The Department's engineering cost estimate for the site.

(B) The prevailing bond rate.

(4) Under cooperative agreements among the Department, the State Conservation Commission and the County Soil Conservation District in which the bond forfeiture site is located, the District may enter into a contract with the landowner of the bond forfeiture site to reclaim the site.

(i) The landowners of bond forfeiture sites will be compensated at a rate equal to the lesser of one of the following:

(A) The Department's engineering cost estimate for the site.

(B) The amount of the forfeited and collected bond.

(ii) The District may also compensate landowners for the reasonable cost of insurance required for landowner reclamation and the design and engineering costs incurred by the landowner in the incidental modification of the reclamation plan, subject to approval by the Department.

(c) The Department will not enter into a reclamation contract under this section with a person unless the person demonstrates the following to the satisfaction of the Department:

(1) Neither the person nor a related party has been convicted of a misdemeanor within the last 3 years for violating The Clean Streams Law (35 P. S. § § 691.1—691.1001), the Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66), the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § § 1406.1—1406.21), the Air Pollution Control Act (35 P. S. § § 4001—4015), the Solid

Waste Management Act (35 P. S. § § 6018.101—6018.1003) or the Dam Safety and Encroachments Act (32 P. S. § § 693.1—693.27).

(2) For bond forfeiture sites for which permits were issued under the Federally approved surface coal mining regulatory program which took effect July 31, 1982, the proposed reclamation plan will result in reclamation of the site in a manner consistent with The Clean Streams Law and the regulations promulgated thereunder for active surface coal mining operations, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations promulgated thereunder for active surface coal mining operations**[, except as provided in paragraph (5)].**

(3) For bond forfeiture sites for which the bonds were declared forfeit on or after May 3, 1978 and for which permits were not issued under the Federally-approved surface coal mining regulatory program which took effect July 31, 1982, the proposed reclamation plan will result in reclamation of the site in a manner that is consistent with the interim Federal program regulations first published at 42 FR 62639 (December 13, 1977), as well as The Clean Streams Law and the regulations promulgated thereunder in effect at the time the bonds were declared forfeit, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations promulgated thereunder in effect at the time the bonds were declared forfeit. If the Department's permit files for the site clearly show that surface mining activities on the site occurred before August 3, 1977, the proposed reclamation plan may be consistent with paragraph (4)**[, except as provided in paragraph (5)]**.

(4) For bond forfeiture sites for which the bonds were declared forfeit before May 3, 1978, the proposed reclamation plan will result in reclamation of the site in a manner that is consistent with The Clean Streams Law and the regulations promulgated thereunder that were applicable to active surface coal mining operations at the time the bonds were declared forfeit, as specified in the contract, and the Surface Mining Conservation and Reclamation Act and the regulations that were promulgated thereunder at the time the bonds were declared forfeit **[, except as provided in paragraph (5)].**

[(5) In lieu of relevant statutes and regulations that are specifically applicable to post mining land use, the plan for a bond forfeiture site may propose to make the site suitable at a minimum for agriculture, forests, recreation, wildlife or water conservation under § 86.187(c).]

[(6)] <u>(5)</u> Except in the case of a landowner of a bond forfeiture site under subsection (b)(2) and (4) the person shall demonstrate the following:

(i) Neither the person nor a related party has a legal obligation to correct the present conditions at the site.

(ii) The person meets the requirements of § 86.37(a)(8)—(11) (relating to criteria for permit approval or denial).

(d) Prior to advertising a project for bids under subsection (b)(1) or to entering into negotiations with the landowner or licensed mine operator under subsection (b)(2), or upon receipt of an unsolicited proposed contract from a licensed mine operator under subsection (b)(3), the Department will publish notice in the *Pennsylvania Bulletin*, and notify the landowners of the bond forfeiture site proposed for reclamation, of the location of the project and a brief summary of work to be done.

(e) Upon awarding a reclamation contract under this section, the Department will notify the landowners of the bond forfeiture site proposed for reclamation of the name of the contract recipient, the location of the project, a summary of work to be done and the cost of the work and will publish a notice in the *Pennsylvania Bulletin* annually of reclamation contracts awarded under this section.

§ 86.190. Sites where reclamation is unreasonable, unnecessary or impossible; excess funds.

(a) If the Department determines in the evaluation of a bond forfeiture site that completion of the approved reclamation plan of the licensed mine operator whose bonds were forfeited for the reclamation site or an alternative reclamation plan is unreasonable, unnecessary or physically impossible, the bond amount will be made available for expenditure from the Fund only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds. The reasons justifying this determination include **[, but are not limited to,]** the following:

(1) The site has been repermitted and rebonded for mining, and reclamation of the site is a condition of the permit.

(2) The site has been otherwise reclaimed.

[(3) The landowner refuses to allow the site to be reclaimed, and the site is not a hazard to public health, safety and welfare or adjacent property.]

(b) Before a final determination under subsection (a), the Department will send written notice to the landowner of the Department's intention to remove restrictions on the expenditure of the forfeited bond amount.

(c) If the Department determines that the funds received from bonds covering the bond forfeiture site exceed the amount which is required to reclaim the bond forfeiture site, the excess funds will be made available for expenditure from the Fund only to reclaim land and restore water supplies affected by surface mining operations for which the Department has forfeited bonds.

§ 86.283. Procedures.

(a) An operator's participation in the financial guarantees program is subject to the following:

(1) Annual payments will be 1% of the total amount of the number of acres of remining area to be affected multiplied by the Department's current applicable bond rates.

(2) The first payment is due upon receipt of notice of the Department's approval of the operator's application to participate in the program. Payments shall be made annually thereafter concurrent with the license renewal or in accordance with a schedule determined by the Department.

(3) Payments are not refundable and will be deposited into the financial guarantees special account in the Remining Financial Assurance Fund to be used in case of operator forfeiture. When the special account becomes actuarially sound, excess payments may be used under section 18(a.1) and (a.2) of the act (52 P. S. § 1396.18(a.1) and (a.2)).

(4) The operator may not substitute financial guarantees for existing collateral or surety bonds.

(b) The operator is responsible for making the annual payment as calculated by the Department, until the amount of the bond is reduced or released in accordance with § § 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).

[(c) An operator approved to participate in the financial guarantees program is not required to pay the per acre reclamation fee required by § 86.17(e) (relating to permit and reclamation fees) for the remining area.]

[(d)] **(c)** The Department will issue a letter to the operator specifying the amount of money in the financial guarantees special account in the Remining Financial Assurance Fund which has been reserved as collateral for the operator's reclamation obligations on the remining area. A copy of the letter will be kept in the operator's permit application file.

[(e)] **(d)** The obligation covered by the financial guarantees program bond will be reduced or released prior to any other bond submitted by the operator to cover the reclamation obligations of that permit. This portion of the bond may not be used to cover the reclamation obligation on another section of the permit area.

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
July 19, 2006

Policy Office 717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown #2
333 Market Street
Harrisburg, PA 17120

Re: Proposed Rulemaking – Coal Mine Reclamation Fees and Reclamation of Bond Forfeiture Sites (#7-401)

Dear Mr. Kaufman:

Enclosed is a copy of a proposed regulation for review and comment by the Independent Regulatory Review 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 August 5, 2006 with a 30-day public comment period. The Environmental Quality Board adopted this proposal at its May 17, 2006 meeting.

This proposal implements the conversion from alternative bonding (bond amount less than full cost of reclamation) to conventional (full cost) bonding. In addition, the reclamation of bond forfeiture site requirements is being made to satisfy Federal Office of Surface Mining primacy conditions.

The Department will provide the Commission with assistance to review this proposal. Section 5(g) of this Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendations or suggestions received by the Commission, as well as the Committees and public commentators, prior to final adoption of the regulation.

For additional information, please contact me at 783-8727.

Sincerely,

Marjorie L. Hughes
Regulatory Coordinator
Policy Office

Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 7- 401

SUBJECT: COAL MINE RECLAMATION FEES AND RECLAMATION OF BOND FORFEITURE SITES

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

RECEIVED
2006 JUL 19 PM 3:25
INDEPENDENT REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/19/06	Carole Raddecig	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
7/19/06	Rhonda Campbell	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
7/19/06	A. Rybarczyk for Bonnie Castelli - Senate	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
		Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
7/19/06	[illegible]	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
7/19/06	C. Lee-Brown	LEGISLATIVE REFERENCE BUREAU (for Proposed only)