

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

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(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: Department of Environmental Protection

(2) Agency Number:

Identification Number: #7-489

IRRC Number: 3074

(3) PA Code Cite: 25 Pa. Code Chapters 77, 86, 87, 88, 89, 90, 211

(4) Short Title: Land Reclamation Financial Guarantees and Bioenergy Crop Bonding

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code Chapter 86 by adding sections 86.162b (Land Reclamation Financial Guarantees) and 86.162c (Bioenergy Crop Bonding) to read as set forth in Annex A. The additions to Chapter 86 proposed by this rulemaking will implement Acts 95 and 157 of 2012. Act 95 of 2012 (Act 95) provides a financial guarantee to surface mining operators reclaiming coal mine sites with bioenergy crops. Act 157 of 2012 (Act 157) establishes Land Reclamation Financial Guarantees (LRFG) which offer financial guarantees to supplement the bonding obligations of qualifying surface mining operators. The bonding incentive programs established by Acts 95 and 157 are voluntary and are intended to assist surface mine operators achieve their statutory bonding obligations.

As part of this rulemaking, the Board also proposes to amend Chapters 77, 86, 87, 88, 89, 90 and 211 to correct certain citations to the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P.S. §§ 1396.1- 1396.19b), the Dam Safety and Encroachments Act (32 P.S. § § 693.1-693.27), and the Solid Waste Management Act (35 P.S. § § 6018.101-6018.1003). These corrections are necessary to account for the addition of section 19.2 at the end of SMCRA, which was added by Act 157, and to correct citation mistakes in Chapters 77, 86, 87, 88, 89, 90 and 211.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The rulemaking is proposed under the authority of Section 5 of The Clean Streams Law (52 P.S. § 691.5); Sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.4(a) and 1396.4b); and Section 1920-A of the Administrative Code of 1929 (71 P.S. 510-20).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Act 95 of 2012 authorizes Bioenergy Crop Bonding, and Act 157 of 2012 establishes LRFGs. The regulations in this proposed rulemaking are necessary to give meaning to and clarify the statutory requirements. Participation in Bioenergy Crop Bonding and LRFGs is voluntary.

There are no relevant court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This proposed rulemaking will accomplish three things. First, it will correct citations to statutes as they appear in Chapters 77, 86, 87, 88, 89, 90 and 211. Second, it will establish regulations to implement Act 95. Third, it will establish regulations to implement Act 157.

The citation corrections will improve the clarity and accuracy of existing regulations.

Furthermore, this rulemaking proposes to establish the regulations for Bioenergy Crop Bonding (Act 95) and LRFGs (Act 157). Both offer financial guarantees that aid surface mining operators in meeting their statutory bonding obligations. Given their overlapping subject matter, it is logical to include the proposed regulations implementing Acts 95 and 157 in the same rulemaking package.

The bonding assistance offered by the Act 95 and Act 157 financial guarantees is quite helpful to surface mining operators because it reduces capital costs. Unlike traditional surety and collateral bonds, which require securities, financial guarantees provide reclamation liability coverage to surface mining operators without the need for posting a security. Securing a bond encumbers cash flow, and since financial guarantees do not require securities, more capital is available to surface mining operators for their operations. As such, the financial guarantees offered by Act 95 and Act 157 reduce the financial impact of statutory bonding obligations on surface mining operators.

At this time, there are approximately 500 licensed surface mining operators in Pennsylvania that would benefit from the financial guarantees offered by Acts 95 and 157. A majority of these operators are small businesses. These operators have suffered from the recent dip in coal markets, and the financial assistance offered by these financial guarantees is likely to keep some surface mining operators in business.

Additionally, the proposed regulations implementing Act 157 provide a discretionary source of funding for Alternate Bonding System (“ABS”) legacy sites by allowing an optional transfer of interest and premiums from the LRFG Account to the Reclamation Fee Operation and Maintenance (“O&M”) Trust Account. ABS legacy sites are surface mining sites that have not been completely reclaimed due to an

insufficient bond being posted under the ABS and include those sites that have abandoned mine discharges. The Reclamation Fee O&M Trust Account provides funds for the reclamation of ABS sites and the treatment of abandoned mine discharges emanating from ABS sites. The transfer of funds from the LRFG Account to the Reclamation Fee O&M Trust Account has the potential to offset an increase in the Reclamation Fee imposed on operators, which is welcomed by the industry, and may help fund projects aimed at eliminating the environmental and safety hazards associated with ABS legacy sites.

(11) 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.

There are no comparable federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

There are no comparable programs in other states. These programs may provide surface coal mining operators in Pennsylvania with an advantage over operators in other states by offering assistance to meet bonding obligations.

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

There is a tangential relationship between these regulations and the regulations at 25 Pa. Code § 86.17 (relating to permit and reclamation fees) in that the premiums collected and interest earned pursuant to the LRFG program may be transferred into the Reclamation Fee O & M Trust account which was established under 25 Pa. Code § 86.17.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The regulatory development process involved several meetings with the Mining and Reclamation Advisory Board (MRAB) and the Regulation, Legislative and Technical Committee of the MRAB. The MRAB representatives include coal mine operators, engineers and the public. The MRAB recommended that the Department proceed with the rulemaking process for these regulations at their October 24, 2013 meeting. The MRAB recommended that language be added to the regulation relating to the appropriation of money from the Gross Receipts Tax as described in section 19.2b(b)(7) of SMCRA. The proposed regulations include language that addresses the MRAB recommendation.

The mine operators represented on the MRAB are small businesses and represent the interest of small businesses.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This rulemaking proposes to implement Acts 95 and 157 which establish financial guarantee programs that will assist surface coal mining operators in the Bituminous and Anthracite coal regions meet their statutory bonding obligations. Currently, there are approximately 500 surface coal mining operators licensed in Pennsylvania, all but five of which are small businesses as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012. While these regulatory programs are available to all surface mining operators, their greatest benefit will be to surface mining operators that are small businesses.

The surface mining operators choosing to participate in the programs implemented by this proposed rulemaking will benefit from the financial guarantees offered by Acts 95 and 157. These financial guarantee programs help surface mining operators meet their statutory bonding obligations without encumbering capital. More specifically, the financial guarantees offered by Acts 95 and 157 provide bond coverage for operators without the need for collateral. Posting collateral and other securities to obtain bonds is financially burdensome on surface mining operators because it encumbers capital that could otherwise be used to conduct mining operations. As such, the financial guarantee programs that will be implemented by this regulation free up capital available to surface mining operators thus easing the financial strain imposed by statutory bonding requirements.

Another impact of this proposed regulation, potentially viewed as adverse, is that it could increase administrative work. Both financial guarantee programs established by Acts 95 and 157 require an application, and time and resources spent on paperwork may increase accordingly. It is not anticipated that the additional paperwork associated with these programs will be particularly burdensome. Moreover, the financial guarantee programs established by Acts 95 and 157 are entirely voluntary, so those surface mining operators not wanting to spend time or resources on more paperwork may choose not to participate in the programs.

This proposed rulemaking also has the potential to impact the bioenergy industry. Act 95 and the proposed regulations that will implement it encourage the use of bioenergy crops for reclamation purposes. Therefore, Act 95's financial guarantee program may be a boon to the bioenergy industry.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

This rulemaking proposes to implement Acts 95 and 157 which establish financial guarantee programs that will assist surface coal mining operators in the Bituminous and Anthracite coal regions meet their statutory bonding obligations. Currently, there are approximately 500 surface coal mining operators licensed to surface mine coal in Pennsylvania, all but five of which are small businesses as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012. The financial guarantee programs offered by Acts 95 and 157 are entirely voluntary, so only those surface mining operators choosing to participate in either or both of the programs will be required to comply with the proposed regulations. It is not known how many operators will choose to participate.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The surface mining operators choosing to participate in the programs implemented by this proposed rulemaking will benefit from the financial guarantees offered by Acts 95 and 157. These financial guarantee programs help surface mining operators meet their statutory bonding obligations without encumbering capital. More specifically, the financial guarantees offered by Acts 95 and 157 provide bond coverage for operators without the need for collateral. Posting collateral and other securities to obtain bonds is financially burdensome on surface mining operators because it encumbers capital that could otherwise be used to conduct mining operations. As such, the financial guarantee programs that will be implemented by this proposed regulation free up capital available to surface mining operators thus easing the financial strain imposed by statutory bonding requirements.

More importantly, the financial guarantees established by Acts 95 and 157 are offered to surface mining operators at little or no cost. The Bioenergy Crop Bonding program established by Act 95 is offered at no cost to operators, meaning that the operator can obtain the financial guarantee without paying a premium. Similarly, the LRFG program established by Act 157 offers a financial guarantee to a surface mining operator at a minimal cost which is incurred through an annual premium payment that is 1.5% of the total amount of the LRFG issued to the operator. Accordingly, if a surface mining operator obtained a LRFG in the amount of \$10,000, its annual premium payment would be \$150. The operator would continue to make this annual premium payment until the bond were released or reduced in accordance with 25 Pa. Code Section 86.170 through Section 86.172. An annual premium payment of \$150 to secure \$10,000 in bond coverage puts less financial strain on an operator than obtaining a surety bond in the amount of \$10,000 which would have to be backed by a security to cover the entire \$10,000 bond.

Because participation in the programs established by both Acts 95 and 157 is voluntary, quantifying the financial and economic impact is not possible. However, it is expected that these financial guarantee programs will benefit surface mining operators, all but five of which are small businesses, as described above.

To provide an example of how a LRFG is intended to function, assume that a surface mining site requires an operator to post a bond totaling \$100,000 to cover reclamation liability. Instead of obtaining a \$100,000 bond from a surety, which would require collateral and other securities to back the bond, a surface mining operator could choose to participate in the LRFG program established by Act 157 and obtain a \$10,000 financial guarantee. While the operator would have to pay a 1.5% premium on the \$10,000 financial guarantee, it would not have to post a security for the financial guarantee. As such, the operator would have \$10,000, less premium payments, to conduct surface mining activities, and only \$90,000 would then have to be backed by a security.

The no-cost financial guarantee made available through Bioenergy Crop Bonding would be provided in a similar manner. Instead of obtaining \$10,000 in bond, a participating surface mining operator could obtain Bioenergy Crop Bonding in the amount of \$10,000, and thus avoid the need to secure that \$10,000 sum, so long as the remaining site permitted to the participating surface mining operator was reclaimed with bioenergy crops and met other requirements proposed in the Bioenergy Crop Bonding regulations.

These examples demonstrate two ways in which the financial guarantees offered by Acts 95 and 157 will benefit operators. First, they provide bond coverage to the operator at little or no cost. Second, they allow operators to cover their reclamation liabilities with a financial instrument other than a bond. Bonds require securities which encumber capital. The smaller the bond an operator must seek from a surety or similar entity, the more capital an operator has available to conduct mining activities and ultimately turn a profit.

Another benefit of the LRFG portion of this rulemaking is that it provides a discretionary funding source for ABS legacy sites. ABS legacy sites are surface coal mining sites that were not completely reclaimed due to deficiencies in the old statutory bonding system which has since been superseded. The Department is responsible for ensuring that the ABS legacy sites are completely reclaimed and for ensuring that any discharges of water emanating from these sites are treated in perpetuity. The premiums collected and interest earned on the account supporting the LRFG program may, at the Department's discretion, be transferred into the Reclamation Fee O&M Trust Account which is exclusively used to reclaim ABS legacy sites and treat discharges emanating therefrom. The discretionary transfer of funds generated by the LRFG program may thus be used to eliminate environmental and health and safety hazards, benefitting all citizens of and visitors to Pennsylvania.

This rulemaking also promotes and provides an incentive for the use of bioenergy crops for mine reclamation. An expanded use of bioenergy crops has the potential to benefit the bioenergy crop industry.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The financial guarantee programs of Acts 95 and 157 explained more fully in previous sections of this Regulatory Analysis Form suggest that surface mining operators choosing to participate in either of these programs stand to benefit from this rulemaking. One of the most important benefits is that a surface mining operator does not need to post collateral to receive a LRFG or Bioenergy Crop Bonding.

Except for the potential slight increase in paperwork, there are no adverse effects of this proposed rulemaking. Moreover, both financial guarantee programs are voluntary so any adverse impacts that may manifest can be avoided by choosing not to participate in the programs. Therefore, the potential financial benefits made available through this proposed rulemaking to surface mining operators, a majority of which are small businesses, significantly outweigh any of the adverse effects identified herein, and any adverse effects may be avoided by choosing not to participate.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are approximately 500 surface mining operators licensed to mine in Pennsylvania, all but five of which are small businesses. However, because participation in the financial guarantee programs of Acts 95 and 157 is voluntary, only those surface mining operators choosing to participate in the financial guarantee programs will be affected by this proposed rulemaking.

Compliance with the proposed rulemaking will impose minimal costs on surface mining operators, if any costs at all. Since the level of participation is not yet known, quantifying exact costs or savings to those impacted by this proposed rulemaking is impossible. However, Act 157 and the regulations proposed in this rulemaking implementing it require a participating operator to pay an annual premium of 1.5% of the total amount of the financial guarantee the operator obtains. Accordingly, if an operator obtains a LRFG pursuant to Act 157 in the amount of \$10,000, the operator will have to pay an annual premium of \$150. The operator will have to continue paying this premium until its bond is reduced or released in accordance with 25 Pa. Code Chapter 86.

The cost of the premium payment, though, avails the participating operator of financial benefits that greatly outweigh the cost of the premium payment. For example, a surface mining site may require an operator to post a bond totaling \$100,000 to cover reclamation liability. Instead of obtaining a \$100,000 bond from a surety, which would require collateral and other securities to back the bond, a surface mining operator could choose to participate in the LRFG program established by Act 157 and obtain a \$10,000 financial guarantee. While the operator would have to pay a 1.5% premium on the \$10,000 financial guarantee, it would not have to post a security for the financial guarantee. As such, the operator would have \$10,000, less premium payments, to conduct surface mining activities, and only \$90,000 would then have to be backed by a security.

Similarly, Bioenergy Crop Bonding makes financial guarantees available to participating operators at no cost. As such, an operator can apply for an obtain Bioenergy Crop Bonding without paying any fee or premium so long as the operator's permitted remaining site is reclaimed with bioenergy crops and other requirements of the proposed rulemaking are met. Thus, an operator obtaining Bioenergy Crop Bonding incurs no costs to participate in the Act 95 program and avoids the need to post a security for the amount of the Bioenergy Crop Bonding, making more capital available to the operator.

These examples demonstrate two ways in which the financial guarantees offered by Acts 95 and 157 will benefit operators. First, they provide bonding coverage to the operator at little or no cost. Second, they allow operators to cover their reclamation liabilities with a financial instrument other than a bond. Bonds require securities which encumber capital. The smaller the bond an operator must seek from a surety or similar entity, the more capital an operator has available to conduct mining activities and ultimately turn a profit.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed rulemaking is not expected to impact local government.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Costs and savings to the state will depend on the number of surface mining operators choosing to participate in the financial guarantee programs established by Acts 95 and 157. Revenue generated by the annual premium payment required to participate in the LRFG program will fund the LRFG Account, and those premium payments, plus interest earned on the LRFG Account, may be transferred into the Reclamation Fee O&M Trust Account. More specifically, Act 157 requires a portion of the funds in the LRFG Account to be designated to underwrite LRFGs and allows for a portion of the funds in the LRFG Account to be held in reserve. Those funds held in reserve in the LRFG Account may, under Act 157, be transferred to the Reclamation Fee O&M Trust Account to facilitate reclamation of ABS legacy sites and treat discharges emanating therefrom. Thus, the LRFG program has the potential to provide a source of funding to two accounts that help ensure the state can fund reclamation of forfeited or abandoned mine sites.

The annual payments and interest earned on the LRFG Account will not be used to offset the costs associated with administering the program. As such, the state will incur costs by administering the LRFG program, but those costs will be minimal. Likewise, administering the Bioenergy Crop Bonding program will result in costs to the Commonwealth, but those costs will be minimal. The cost to administer both of these programs depends upon participation.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Surface mining operators choosing to participate in either of the programs must complete and submit a form for the particular program. There are forms for the LRFG program and for the Bioenergy Crop Bonding program. These forms have been drafted to collect the information necessary to implement the programs.

Beyond these forms, there are no additional legal, accounting, or consulting procedures are expected for the groups identified in items (19)-(21) above.

(23) In the table below, provide an estimate of the fiscal savings and costs 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	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Savings	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
COSTS:						
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$5,000.00	\$10,000.	\$11,000.	\$12,000.	\$13,000
Total Costs	\$0.00	\$5,000.00	\$10,000.	\$11,000.	\$12,000.	\$13,000
REVENUE LOSSES:						
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Revenue Losses	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) Currently, there are approximately 500 surface coal mining operators licensed in Pennsylvania, all but five of which are small businesses as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012. The surface mining operators choosing to participate in the programs implemented by this proposed rulemaking will benefit from the financial guarantees offered by Acts 95 and 157. These financial guarantee programs help surface mining operators meet their statutory bonding obligations without encumbering capital. More specifically, the financial guarantees offered by Acts 95 and 157 provide bond coverage to operators without the need for collateral. Posting collateral and other securities to obtain bonds is financially burdensome on surface mining operators because it encumbers capital that could otherwise be used to conduct mining operations. As such, the financial guarantee programs that will be implemented by this regulation free up capital available to surface mining operators thus easing the financial strain imposed by statutory bonding requirements.

(b) The financial guarantees established by Acts 95 and 157 are offered to surface mining operators at little or no cost. The Bioenergy Crop Bonding program established by Act 95 is offered at no cost to operators, meaning that the operator can obtain the financial guarantee without paying a premium. Similarly, the LRFG program established by Act 157 offers a financial guarantee to a surface mining operator at a minimal cost which is incurred through an annual premium payment that is 1.5% of the total amount of the LRFG issued to the operator.

(c) Because participation in the programs established by both Acts 95 and 157 is voluntary, quantifying the financial and economic impact is not possible. However, it is expected that these financial guarantee programs will benefit surface mining operators, a majority of which are small businesses, as described above. For example, a surface mining operator could choose to participate in the LRFG program or the Bioenergy Crop Bonding program and obtain a \$10,000 financial guarantee. An operator obtaining a financial guarantee under either program would not have to post a security for the financial guarantee, thus making available capital that would be encumbered by a bond.

This example demonstrates two ways in which the financial guarantees offered by Acts 95 and 157 will benefit operators. First, it provides bonding coverage to the operator at little or no cost. Second, it allows operators to cover their reclamation liabilities with a financial instrument other than a bond. Bonds require securities which encumber capital. The smaller the bond an operator must seek from a surety or similar entity, the more capital an operator has available to conduct mining activities and ultimately turn a profit.

This proposed rulemaking also has the potential to impact the bioenergy industry. Act 95 and the proposed regulations that will implement it encourage the use of bioenergy crops for reclamation purposes. Therefore, Act 95's financial guarantee program may be a boon to the bioenergy industry.

Both financial guarantee programs established by Acts 95 and 157 require participants to submit applications. This slight increase in paperwork is not expected to be particularly burdensome. Moreover, the financial guarantee programs established by Acts 95 and 157 are entirely voluntary, so those surface mining operators not wanting to spend time or resources on more paperwork may choose not to participate in the programs.

(d) There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

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

No special provisions have been implemented. This proposed rulemaking will implement programs that provide financial incentives to surface mining operators, many of which are small businesses. Participation in the programs established by Acts 95 and 157 is voluntary.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered. The approach was to provide the essential elements required by the statutes.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses.

The financial guarantee programs enacted by Acts 95 and 157 are voluntary. As such, only those surface mining operators choosing to participate in either program will be subject to the requirements of the proposed rulemaking. Moreover, these financial guarantee programs were enacted to assist surface mining operators, many of which are small businesses, in meeting their statutory bonding obligations.

The compliance and reporting requirements in this proposed rulemaking are minimal. In fact, participation in these programs, except for the 1.5% annual payment required by the proposed regulations implementing Act 157, requires generally the same information a surface mining operator must collect and submit to obtain a mining permit. Therefore, a surface mining operator is likely to have all of the information needed to participate in both the Bioenergy Crop Bonding program and the LRFG

Program readily available.

- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

Since many surface mining operators are small businesses, the proposed compliance and reporting requirements of these beneficial financial guarantee programs are tailored to accommodate small business.

There are no schedules or deadlines for compliance and reporting proposed in this rulemaking, and participation in the programs is voluntary.

- c) The consolidation or simplification of compliance or reporting requirements for small businesses.

Since many surface mining operators are small businesses, the proposed compliance and reporting requirements of these beneficial financial guarantee programs are tailored to accommodate small business.

- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation.

Design and operational standards do not factor into this proposed regulation.

- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Participation in the programs implemented by this proposed rulemaking is voluntary. Therefore, any surface mining operator that is a small business can choose to ignore the programs.

There is no adverse impact expected on small businesses. In fact, this regulation will provide assistance to coal mine operators, most of which are small businesses.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

There is no data upon which this regulation is based.

(29) Include a schedule for review of the regulation including:

- | | |
|---|------------------|
| A. The date by which the agency must receive public comments: | October 31, 2014 |
| B. The date or dates on which public meetings or hearings will be held: | NA |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | October 31, 2015 |
| D. The expected effective date of the final-form regulation: | October 31, 2015 |
| E. The date by which compliance with the final-form regulation will be required: | October 31, 2015 |
| F. The date by which required permits, licenses or other approvals must be obtained: | NA |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The regulations include a requirement for periodic review of the limits and process. This is required at least every five years. In the initial implementation period, it is anticipated that an annual review will be conducted to identify process improvements.

FACE SHEET
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(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)

SEP 30 2014

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. 7-489

DATE OF ADOPTION July 15, 2014

BY E. Christopher Abruzzo

TITLE E. CHRISTOPHER ABRUZZO
CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY [Signature]

SEP 03 2014
DATE OF APPROVAL

(~~Exec. 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

Land Reclamation Financial Guarantees and Bioenergy Crop Bonding

25 Pa. Code, Chapters 77, 86, 87, 88, 89, 90, 211

**PROPOSED RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CHAPTERS 77, 86, 87, 88, 89, 90, 211]**

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code Chapter 86 by adding sections 86.162b (Land Reclamation Financial Guarantees) and 86.162c (Bioenergy Crop Bonding) to read as set forth in Annex A. The additions to Chapter 86 proposed by this rulemaking will implement Acts 95 and 157 of 2012. Act 95 provides a financial incentive to surface mining operators reclaiming remining sites with bioenergy crops. Act 157 establishes Land Reclamation Financial Guarantees (LRFGs) to satisfy the bonding obligations of qualifying surface mining operators. A proposed amendment to section 86.187(a)(1)(iii) will reflect the establishment of LRFGs. The financial guarantees established by Acts 95 and 157 are voluntary and intended to assist surface mining operators to satisfy their statutory bonding obligations.

As part of this rulemaking, the Board also proposes to amend Chapters 77, 86, 87, 88, 89, 90 and 211 to correct citations to the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P.S. §§ 1396.1- 1396.19b), the Dam Safety and Encroachments Act (32 P.S. § § 693.1-693.27), and the Solid Waste Management Act (35 P.S. § § 6018.101-6018.1003). These corrections are necessary to account for the addition of section 19.2 at the end of SMCRA, which was added by Act 157, and to correct existing citation errors in Chapters 77, 86, 87, 88, 89, 90 and 211.

This proposed rulemaking was adopted by the Board at its meeting of July 15, 2014.

A. Effective Date

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

B. Contact Persons

For further information, contact Thomas Callaghan, P.G., Director, Bureau of Mining Programs, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5015; or Robert “Bo” Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available electronically on the Department of Environmental Protection’s (Department) web site at www.dep.state.pa.us (select Public Participation Center, then select Environmental Quality Board).

C. Statutory Authority

This proposed rulemaking is authorized under the authority of Section 5 of The Clean Streams Law (52 P.S. § 691.5); Sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.4(a) and 1396.4b); and Section 1920-A of the Administrative Code of 1929 (71 P.S. 510-20).

D. Background and Purpose

This proposed rulemaking will accomplish three things. First, it will correct citations to statutes as they appear in Chapters 77, 86, 87, 88, 89, 90 and 211. Second, it proposes regulations to implement Act 95. Third, it proposes regulations to implement Act 157.

The amendments to Chapters 77, 86, 87, 88, 89, 90, and 211 correct citations to SMCRA, the Dam Safety and Encroachments Act (32 P.S. §§ 693.1-693.27), and the Solid Waste Management Act (35 P.S. §§ 6018.101-6018.1003). This is strictly a housekeeping matter.

Act 95 amended SMCRA by adding section 4.14 (52 P.S. § 1396.4n) and allows surface coal mining operators to seek reclamation bond coverage at no cost when reclaiming a remaining site with bioenergy crops. This rulemaking will provide the framework for implementing Act 95's bioenergy crop reclamation incentive. Seeking Bioenergy Crop Bonding established by Act 95 is voluntary.

Act 157 is a statutory amendment that makes LRFGs available to operators. LRFGs offer financial guarantees to assure the bonding obligations of qualifying surface mining operators, and this rulemaking proposes the framework for providing LRFGs to surface mining operators. Seeking LRFGs established by Act 157 is voluntary.

Citation Updates

Amendments to Chapters 77, 86, 87, 88, 89, 90 and 211 are necessary to correct certain citations to SMCRA (52 P.S. §§ 1396.1- 1396.19b), the Dam Safety and Encroachments Act (32 P.S. § § 693.1-693.27), and the Solid Waste Management Act (35 P.S. § § 6018.101-6018.1003). These corrections account for the appending of section 19.2 at the end of SMCRA, which was added by Act 157, and correct existing citation errors in Chapters 77, 86, 87, 88, 89, 90 and 211.

Acts 95 and 157

Both Act 95 and Act 157 establish financial guarantees that are intended to assist surface mining operators in meeting their SMCRA bonding obligations. Accordingly, the proposed regulations implementing Acts 95 and 157 have been included in the same rulemaking package.

By way of background, SMCRA bonding obligations ensure that surface mining sites are reclaimed which eliminates environmental and safety hazards. Prior to 2001, the Department implemented an alternate bonding system (ABS). Under the ABS, the bond amount for a surface mining site was determined by a per-acre flat rate that was supplemented by a non-refundable per-acre "Reclamation Fee." The ABS ultimately failed to ensure adequate bonding, leaving some mine sites in an unreclaimed state. These unreclaimed sites are known as ABS legacy sites, and the Department is responsible for reclaiming the ABS legacy sites and treating post-mining pollutional discharges emanating therefrom.

Due to funding deficiencies, which ultimately resulted in ABS legacy sites, the ABS was discontinued and replaced with the full-cost bonding program. Full-cost bonding guarantees that all surface mining sites will be sufficiently bonded to meet reclamation obligations. The transition from the ABS to the full-cost bonding program was facilitated through the use of financial guarantees known as Conversion Assistance. As part of Conversion Assistance, the General Assembly appropriated \$7 million to the Department through Section 213 of the Act of June 22, 2001 (P.L. 979, No. 6A), known as the “General Appropriation Act of 2001.” Consistent with SMCRA, this appropriation allowed for the use of sum-certain financial guarantees to satisfy the bonding obligations for a surface mining site. *See*, 52 P.S. § 1396.4(d.2). Acts 95 and 157 establish programs that offer such financial guarantees.

Financial guarantees, such as those established in Acts 95 and 157, help surface mining operators meet their statutory bonding obligations by reducing capital costs. A reduction in capital costs means more cash is available to surface mining operators for their operations. Financial guarantees thus reduce the financial impact of statutory bonding requirements on surface mining operators.

Act 95—Bioenergy Crop Bonding

As a surface mining site is reclaimed, the bond posted to financially guarantee reclamation is released. Pursuant to Chapter 86, bond release occurs in three stages. After a surface mining site has been regraded and planted with permanent vegetation, thus satisfying stage 2 reclamation obligations, a portion of the bond posted will be held for a period of at least five years. This is the stage 3 reclamation liability period.

Act 95 offers a sum-certain financial guarantee at no cost to a permittee to cover stage 3 reclamation liability where the permittee reclaims a remaining site with bioenergy crops such as switchgrass, camelina, or canola. In the event of bond forfeiture, the financial guarantee established by Act 95 finances reclamation of the forfeited site in an amount not to exceed the sum-certain guarantee. Participation in the Bioenergy Crop Bonding program established by Act 95 is voluntary.

Act 95 permits funding of this program only to the extent funds are available from the appropriation to the Department under section 213 of the Act of June 22, 2001 (P.L. 979, No. 6A), known as the “General Appropriation Act of 2001,” or to the extent funds are otherwise appropriated.

The regulations proposed in Section 86.162c of Annex A will implement the requirements of Act 95.

Act 157—Land Reclamation Financial Guarantees

Act 157 established the LRFG Account, authorized a one-time transfer of \$500,000 from Conversion Assistance monies to the Remaining Financial Assurance Fund, and authorized the transfer of the remaining Conversion Assistance monies to the LRFG Account. The transfers were executed in 2013. The funds in the LRFG Account are to be used, in part, to underwrite

LRFGs established by Act 157. At this time, more than \$12 million are available to support the LRFG program as it is structured in Act 157 and for other uses authorized by Act 157.

LRFGs are offered to assist surface mining operators achieve full-cost bonding as required by SMCRA by making available to applicants sum-certain financial guarantees to cover reclamation obligations. This proposed rulemaking provides the framework for offering LRFGs.

Act 157 establishes eligibility guidelines to determine which surface mining operators may receive LRFGs. In determining eligibility, the Department is to consider a number of factors including the operator's long-term financial stability, compliance history, time in business, and prior denial of coverage for a surety bond, if any. The Department may also consider other factors that are indicative of an operator's ability to complete reclamation and make payments under the program. Beyond these eligibility requirements, the Department is to consider the environmental and safety hazards and coal reserves available at the site.

Act 157 establishes LRFGs and the LRFG fee. This fee, along with interest earned on the funds in the LRFG Account, may be transferred into the Reclamation Fee Operation and Maintenance (O&M) Trust Account established pursuant to 25 Pa. Code §§ 86.17 (relating to permit and reclamation fees) and 86.187 (relating to use of money) so long as the financial stability of the LRFG program is not threatened. The transfer of funds from the LRFG Account to the Reclamation Fee O&M Trust Account is intended to supplement the Reclamation Fee O&M Trust Account which is used to pay for the operation and maintenance of treatment systems at ABS legacy sites.

Furthermore, Act 157 requires the total amount of LRFGs that can be supported by the LRFG Account to be calculated. This is based on loss reserves and calculated by applying the historical rate of mine operator bond forfeiture plus a reasonable margin of safety to protect the account from the risk of forfeiture. Additionally, regulation underwriting methods adequate to ensure the account against the risk of forfeiture of the guarantees must be established. According to Act 157, the LRFG Account is to be the sole source of funds used to underwrite LRFGs, and the Commonwealth is not obligated to expend any funds beyond the amount in the LRFG Account.

Act 157 also includes a provision for the annual appropriation of up to two million dollars collected from the Gross Receipts Tax by the General Assembly to the Department for transfer into the Reclamation Fee O & M Trust Account established in 25 Pa. Code § 86.17.

Finally, Act 157 permits the discontinuance of LRFGs if 25% or more of the total outstanding bond obligation for all issued LRFGs is subject to forfeiture.

The LRFGs established by Act 157 share many concepts with the remaining financial guarantee (RFG) program. The experience gained from implementing the RFG program since 1996 has been useful in establishing the proposed requirements for implementing LRFGs.

Mining and Reclamation Advisory Board Collaboration

The Department collaborated with the Mining and Reclamation Advisory Board's (MRAB) Regulation, Technical and Legislative committee to develop this proposed rulemaking. The MRAB voted for the proposed rulemaking to proceed at its October 24, 2013 and provided one recommendation to the portion of the rulemaking implementing Act 157. The MRAB specifically recommended the following language be added to the regulation relating to the appropriation of money from the Gross Receipts Tax as described in section 19.2b(b)(7) of SMCRA and Act 157:

No later than the date of the Department's annual budget request to the Governor's Budget Office, the Department shall report to the MRAB as to when a transfer from the Gross Receipts Tax to the Reclamation Fee O & M Trust Account is necessary to supplement the funding of the Reclamation Fee O & M Trust Account in order to offset an increase in the reclamation fee in the subsequent fiscal year.

Though not adopting this language verbatim, the Department has incorporated the substance of this recommendation in a proposed amendment to 25 Pa. Code § 86.17(e) which is also part of this proposed rulemaking. Section 86.17(e) requires the Department to provide information to the MRAB on the status of the operation and maintenance of treatment facilities at ABS legacy sites and the funding status of the Reclamation Fee O & M Trust Account. In the course of fulfilling this existing obligation under section 86.17(e), the Department, as recommended by the MRAB and proposed in this rulemaking, will provide information on the appropriation from the Gross Receipts Tax by the time the Department's budget request is provided to the Governor's Budget Office. This proposed amendment to section 86.17(e) will satisfy the provision in Act 157 and the MRAB's recommendation.

E. Summary of Proposed Regulatory Requirements

SMCRA Citation Updates

The following sections are being amended to make minor non-substantive technical corrections to the regulations because Act 157 amended section 19.2 in SMCRA: § 77.1 (relating to Definitions); § 77.126 (relating to Criteria for permit approval or denial); § 77.254 (relating to Preservation of remedies); § 86.1 (relating to Definitions); § 86.6 (relating to Extraction of coal incidental to government-financed construction or government financed reclamation projects); § 86.12 (relating to Continued operation under interim permits); § 86.121 (relating to Areas exempt from designation as unsuitable for surface mining operations); § 86.159 (relating to Self-bonding); § 86.185 (relating to Preservation of remedies); § 86.187 (relating to Use of money); § 86.232 (relating to Definitions); § 86.252 (relating to Definitions); § 86.358 (relating to Suspension and revocation); § 87.1 (relating to Definitions); § 87.205 (relating to Approval or denial); § 88.482 (relating to Definitions); § 88.505 (relating to Approval or denial); § 89.5 (relating to Definitions); § 90.305 (relating to Application approval or denial); and § 211.121 (relating to General requirements).

This rulemaking also corrects a typographical error in the citation to SMCRA in § 86.182(h)(2).

This rulemaking also includes another correction to citations of the Dam Safety and Encroachments Act (32 P.S. § § 693.1-693.27) and the Solid Waste Management Act (35 P.S. § § 6018.101-6018.1003) in the following section: § 77.254 (relating to Preservation of Remedies).

Finally, this rulemaking includes a correction to the citation of the Dam Safety and Encroachments Act (32 P. S. § § 693.1-693.27) in the following section: § 86.232 (relating to Definitions).

Act 95—Bioenergy Crop Bonding

Proposed section 86.162c(a) describes conditions of eligibility to obtain Bioenergy Crop Bonding. Bioenergy Crop Bonding may be obtained where crops, including switchgrass, canola, or camelina, or those grown to produce feedstock for biofuels, including biodiesel and ethanol, and biomass for electricity generation, are grown to reclaim remaining sites. To obtain Bioenergy Crop Bonding, stage 2 bond release needs to have been achieved and water treatment liability must not have been triggered under Chapter 87, Subchapter F; Chapter 88, Subchapter G; or Chapter 90, Subchapter F.

Proposed section 86.162c(b) describes the application requirements of Bioenergy Crop Bonding. An application shall provide: verification that the entire permitted area has achieved Stage 2 bond release consistent with section 86.174(b); a demonstration that the crops grown are bioenergy crops; crop yield data that demonstrates that the bioenergy crops are achieving acceptable crop production; a demonstration that all temporary structures have been reclaimed; a demonstration that there are no post-mining polluttional discharges or that all liability associated with post-mining polluttional discharges is fully covered with a full-cost bond or a fully funded post-mining treatment trust; acknowledgement that the permittee intends to apply for final release of the Bioenergy Crop Bonding in a timely manner.

Proposed section 86.162c(c) provides that upon approval of the Bioenergy Crop Bonding application, the Department will release the existing bond held for Stage 3 liability.

Proposed section 86.162c(d) establishes that the liability period under the Bioenergy Crop Bonding cannot exceed five years. Moreover, permits with a bond liability period greater than five years are not eligible because of the risk of water pollution (25 Pa. Code §§ 86.151(b)(1); 86.151(c)).

Proposed section 86.162c(e) provides that the Bioenergy Crop Bonding for a permit will expire no later than 120 days after the expiration of the five-year liability period. In the case where the final bond release cannot be accomplished upon expiration of the Bioenergy Crop Bonding, then the Bioenergy Crop Bonding must be replaced.

Proposed section 86.162c(f) requires Bioenergy Crop Bonding to be replaced if the final bond release is not achieved upon the expiration of Bioenergy Crop Bonding.

Act 157—Land Reclamation Financial Guarantees

This rulemaking, in part, addresses Act 157's provision on the annual appropriation of funds from the Gross Receipts Tax to the Reclamation Fee O&M Trust Account. In response to that

provision, the MRAB suggested language to be included in this proposed rulemaking requiring the Department to issue a report to the MRAB on the Reclamation Fee O&M Trust Account. Section 86.17 currently requires such an annual report from the Department which includes an update on the Reclamation Fee O & M Trust Account, a financial analysis of the revenue and expenses from the account, and establishes a process for presenting the report to the MRAB for its review and comments. The information made available through this process is the same information necessary for the Department to determine when additional funds are needed to supplement the Reclamation Fee O & M Trust Account in order to offset an increase in the Reclamation Fee. Offsetting an increase in the Reclamation Fee is important to operators because the Reclamation Fee impacts operating expenses.

While the exact language of the MRAB's recommendation was not used, proposed language has been added to section 86.17(e)(2) as part of this rulemaking that incorporates the substance of the MRAB's recommendation. This proposed addition to section 86.17 is the most effective way to assure that the MRAB is provided with the information necessary to fully implement Act 157.

Proposed section 86.17(e)(2) will incorporate the MRAB's recommendation by requiring the Department's annual report on the Reclamation Fee O&M Trust Account to include information necessary for determining the need to supplement the funding of the Reclamation Fee O&M Trust Account. The proposed amendment to the regulation also provides that the need to supplement the funding of the Reclamation Fee O&M Trust Account will be based on the need to offset an increase in the reclamation fee and the need to provide for long term operations at ABS Legacy sites.

Proposed section 86.162b(a) establishes that the Department will designate funds in the LRFG Account to underwrite LRFGs.

Proposed section 86.162b(b) provides that funds in the LRFG Account will be used to cover obligations for all existing sum-certain financial guarantees needed to facilitate the implementation of full-cost bonding previously issued by the Department.

Proposed section 86.162b(c) establishes that LRFGs may be used to financially assure the bonding obligations of qualified surface coal mining operators engaged in surface mining activities under § 86.143 which relates to the requirement to file a bond.

Proposed section 86.162b(d) provides that the Department will hold in reserve in the LRFG Account funds that are not designated to underwrite LRFGs. Proposed sections 86.162b(d) and (e) implement the distinction drawn in Act 157 between funds in the LRFG Account designated to underwrite LRFGs (subsection (d)) and funds in the LRFG Account held in reserve (subsection (e)) for purposes such as assuring the availability of funding to cover reclamation liabilities.

Proposed section 86.162b(e) identifies the purposes for which funds held in reserve in the LRFG Account may be used. Such funds may be used to: assure the availability of funds to cover reclamation liabilities in the event of forfeiture; underwrite sum-certain guarantees made

available by Bioenergy Crop Bonding; and provide for transfers of available funds to the Reclamation Fee O&M Trust Account.

Proposed section 86.162b(f) places three restrictions on the amount of LRFGs the Department may issue. First, the Department may not issue LRFGs for a permit in excess of 50% of the required bond amount for that permit, which is the Permit Limit. Second, the Department may not issue LRFGs to a mine operator in excess of the Operator Limit, which is exceeded if the aggregate amount of LRFGs on permits issued to the operator exceeds 30% of the designated amount in the LRFG Account. Third, the Department may not issue additional LRFGs in excess of the Program Limit which is when the aggregate amount of outstanding LRFGs is greater than the current designated amount in the LRFG Account divided by the historical rate of mine operator bond forfeiture under § 86.181 (relating to general), plus a margin of safety determined by the Department.

Proposed section 86.162b(g) establishes that any existing sum-certain financial guarantee needed to facilitate the implementation of full-cost bonding previously issued by the Department shall be converted into a LRFG. However, if the conversion results in the LRFG exceeding the Permit Limit established at subsection (f)(1), the LRFG amount does not need to be reduced, but the permit will be ineligible for additional LRFGs until the total for the permit is under the Permit Limit. Furthermore, if the conversion results in the LRFG for an operator exceeding the Operator Limit established at subsection (f)(2), the LRFG does not need to be reduced, but the operator will be ineligible for additional LRFGs until the total for the operator is under the Operator Limit.

Proposed section 86.162b(h) provides for the Department to prepare an evaluative report containing a financial analysis of the revenue and expenditures for the LRFG Account. The report may be prepared at the request of the MRAB and is to be provided no less than every five years irrespective of a request by the MRAB. During the initial implementation of this program, it is likely that more frequent evaluations will be completed.

The subsection further provides that: the report will evaluate the annual payment percentage rate referenced in subsection (m)(1), the Permit Limit, the Operator Limit, and the Program Limit for the LRFG program; the report will be submitted to the members of the MRAB for their review and advice and will be published on the Department's website; notice of the report's availability will be published in the *Pennsylvania Bulletin*; the Department will review the report at a public meeting of the MRAB; if the Department's review of the report at a public meeting of the MRAB results in a change to the Permit Limit, Operator Limit, Program Limit, or the annual payment percentage rate, the Department will publish a notice of the changes in the *Pennsylvania Bulletin*; changes to the Permit Limit, Operator Limit, Program Limit, or the annual payment percentage rate will become effective upon publication in the *Pennsylvania Bulletin*.

Proposed section 86.162b(i) establishes that interest earned and payments collected and deposited in the LRFG Account may be transferred by the Department into the Reclamation Fee O&M Trust Account, established pursuant to sections 86.17 and 86.187, to be used to

supplement the funding of the Reclamation Fee O&M Trust Account consistent with sections 19.2 (b)(5) and 19.2 (b)(6) of the act (52 P.S. § 1396.19b(b)(5) and 52 P.S. § 1396.19b(b)(6)).

Proposed section 86.162b(j) states that the Department will provide to the MRAB information about any proposed transfer of funds to the Reclamation Fee O&M Trust Account. The Department may solicit advice from the MRAB prior to such transfer.

Proposed section 86.162b(k) establishes the eligibility requirements for participation in the LRFG program. These requirements include being a licensed mine operator, having a good compliance record, and having a good record of making timely payments and completing reclamation obligations. The section further proposes requirements for new participants including having been licensed for at least five years and being eligible for surety bond coverage.

Proposed section 86.162b(l) provides that an application for a LRFG shall include a description of the environmental and safety hazards of the site for which a guarantee is proposed, a description of the availability of coal reserves at the site, and any prior denials of surety coverage.

Proposed section 86.162b(m) places certain restrictions on obtaining a LRFG including: a participating operator shall make annual payments to the Department in the amount of 1.5% of the total amount of the LRFG; the first annual payment shall be due upon the operator's receipt of notice of the Department's approval of the operator's application to participate in the program and payments shall be made annually thereafter concurrent with the permit anniversary date or in accordance with a schedule determined by the Department; the operator shall be responsible for making the annual payment as calculated by the Department until the amount of the bond is reduced or released in accordance with sections 86.170 through 86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond); payments are not refundable and will be deposited into the LRFG Account to be used in the event of mine operator forfeiture and excess payments may be transferred by the Department to the Reclamation Fee O & M Trust Account consistent with section 19.2 (b)(6) of the act (52 P.S. 1396.19b(b)(6)); the operator shall not substitute LRFGs for existing collateral or surety bonds.

Proposed section 86.162b(n) provides that the Department may adjust the annual payment percentage rate in order to assure financial stability of the LRFGs and to cover the Department's costs to administer the guarantees, after consultation with the MRAB and publication in the *Pennsylvania Bulletin* for public comment.

Proposed section 86.162b(o) establishes that the Department will reduce or release an obligation covered by the LRFGs prior to any other bond submitted by the operator to cover the reclamation obligations of a permit, except that remaining financial guarantees issued pursuant to section 4.12 of the act (52 P. S. § 1396.41) will be released before LRFGs.

Proposed section 86.162b(p) provides that if a post-mining pollutional discharge develops on a permit for which the LRFG has been obtained, the operator shall, within 90 days of receipt of written notice by the Department, provide to the Department a separate bond or alternative financial assurance mechanism to cover the long-term treatment costs associated with the

discharge or replace the LRFG with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge.

Proposed section 86.162b(q) provides that upon forfeiture under section 86.181 the Department will declare forfeit the specified amount of the LRFG for the permit in the LRFG account in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

Proposed section 86.162b(r) provides that the Department's declaration of forfeiture under this section does not discharge the operator's obligation to meet the requirements of this chapter or other requirements under the act.

Proposed section 86.162b(s) establishes that upon declaration of forfeiture, the Department will use the bond money posted by the operator and the specified amount of the LRFG and any other alternative financial assurance mechanisms to complete the reclamation of the mine site in accordance with the procedures and criteria in sections 86.187 through 86.190.

Proposed section 86.162b(t) provides that the Department may suspend the issuance of LRFGs upon notice in the *Pennsylvania Bulletin* when the number of participating permits declared forfeit equals the number of participating permits multiplied by the historical rate of bond forfeiture plus a margin of safety. Issuance of LRFGs may resume after the Department conducts an evaluation, taking into account advice from the MRAB, which demonstrates that adequate funding is available.

Proposed section 86.162b(u) establishes that the Department will discontinue the LRFGs and notice will be published in the *Pennsylvania Bulletin* if 25% or greater of the outstanding bond obligation for the LRFGs is declared forfeit. If the LRFGs are discontinued, no additional LRFGs may be approved. Outstanding LRFGs will remain in effect until released under sections 86.170 through 86.175.

Proposed section 86.162b(v) provides that the Department will not approve additional LRFGs if LRFGs are discontinued. Outstanding LRFGs will remain in effect until released under sections 86.170 through 86.175.

The proposed amendment to section 86.187 will account for the implementation of LRFGs under Act 157 by providing that the Department may deposit other moneys into the Reclamation Fee O&M Trust Account, including the fees collected for LRFGs implemented by 86.162b (relating to Land Reclamation Financial Guarantees) needed to facilitate full-cost bonding in accordance with applicable law.

F. *Benefits, Costs and Compliance*

Benefits

This proposed rulemaking will improve clarity and accuracy in existing regulations by correcting statutory citations.

This proposed rulemaking also promotes the use of bioenergy crops for mine reclamation by providing a no-cost incentive to operators choosing to reclaim sites with bioenergy crops. Such an incentive has the potential to restore the environment and alleviate some of the financial burden on surface mining operators since bonding costs have a substantial impact on a mine operator's financial status.

Likewise, the portion of this proposed rulemaking implementing Act 157 will reduce costs to surface mining operators by providing them with a means of covering part of their bond liability at a low cost. The proposed rules implementing Act 157 also provide a discretionary source of funding for ABS legacy sites by allowing an optional transfer of interest and premiums from the LRFG Account to the Reclamation Fee O&M Trust Account. This has the potential to offset an increase in the Reclamation Fee, which is welcomed by the industry, and may help fund projects aimed at eliminating the environmental and safety hazards associated with ABS legacy sites.

More generally, bonding assistance in the form of financial guarantees is quite helpful to surface mining operators because it reduces capital costs. Unlike traditional surety and collateral bonds, which require cash or property as a security, financial guarantees provide reclamation liability coverage to surface mining operators without the need for posting a security. Securing a bond encumbers cash flow, and since financial guarantees do not require securities, more capital is available to surface mining operators for their operations. As such, financial guarantees, including those offered by Act 95 and Act 157, reduce the financial impact of statutory bonding obligations on surface mining operators.

Compliance Costs

The citation corrections will not result in any compliance costs.

Obtaining Bioenergy Crop Bonding and LRFGs is optional for coal mine operators. Bioenergy Crop Bonding is offered at no-cost, and there is only a minimal fee required to obtain a LRFG. As such, compliance costs will be minimal.

Compliance Assistance Plan

Compliance assistance for this rulemaking will be provided through routine interaction with trade groups and individual applicants. There are about 500 licensed surface coal mining operators in Pennsylvania, most of which are small businesses that will be subject to this regulation. It is not anticipated that the rulemaking will increase costs since the proposed rulemakings provide no-cost and low-cost financial incentives to surface coal mining operators.

Paperwork Requirements

Since Bioenergy Crop Bonding and LRFGs are voluntary, surface coal mining operators will experience a marginal increase in paperwork only if they choose to obtain these financial guarantees. The additional paperwork requirements associated with this proposed rulemaking

for both Bioenergy Crop Bonding and LRFGs include submitting additional documents with the permit application relating to the programs.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

H. 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.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 7, 2014, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the House and Senate 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, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board. Comments, suggestions or objections must be received by the Board by November 24, 2014. In addition to the submission of comments, 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 Board by

November 24, 2014. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. Please note, if an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing the Board's online comment system at <http://www.ahs.dep.pa.gov/RegComments>. Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

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

DANA K. AUNKST
Acting Chairperson,
Environmental Quality Board

PROPOSED RULEMAKING

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE I. LAND RESOURCES
CHAPTERS 77, 86, 87, 88, 89, 90, and 211

CHAPTER 77. NONCOAL MINING

§ 77.1. Definitions.

Environmental acts—The term includes the following:

(vi) The Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.**3119b**).

§ 77.126. Criteria for permit approval or denial.

(a) A permit, permit renewal or revised permit application will not be approved, unless the application affirmatively demonstrates and the Department finds in writing, on the basis of the information in the application or from information otherwise available, that the following apply:

(6) The applicant or related party, as indicated by past or continuing violations, has not shown a lack of ability or intention to comply with the act or the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.**3119b**).

§ 77.254. Preservation of remedies.

(a) Remedies provided in law for violation of the act, the Surface Mining and Reclamation Act (52 P. S. § § 1396.1—1396.**3119b**), The Clean Streams Law (35 P. S. § § 691.1—691.1001), the Air Pollution Control Act (35 P. S. § § 4001—4015), **the act of June 25, 1913 (P. L. 555, No. 355), known as The Water Obstructions Law (32 P. S. § § 681—691) (Repealed)****The Dam Safety and Encroachments Act (32 P.S. § § 693.1-693-27)**, the Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66),**the Pennsylvania Solid Waste Management Act**

(Repealed) (35 P. S. §§ 6001—6017)**The Solid Waste Management Act (35 P.S. §§6018.101-6018.1003)** and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21), regulations thereunder or the conditions of the permits, are expressly preserved.

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

§ 86.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Acts—Include the following:

(i) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.**31a****19b**).

§ 86.6. Extraction of coal incidental to government-financed construction or government-financed reclamation projects.

(a) Extraction of coal incidental to government-financed construction or government-financed reclamation projects is exempt from the permitting requirements of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19**a****b**) and this chapter as it relates to surface mining activities and operations, and Chapters 87 and 88 (relating to surface mining of coal; and anthracite coal) if the following conditions are met:

§ 86.12. Continued operation under interim permits.

(a) A person conducting coal mining activities under a permit issued in accordance with Chapter 13 (relating to compliance with the Surface Mining Control and Reclamation Act of 1977), who has filed an application for permit under § 86.14(a) (relating to permit application filing deadlines) for which the Department has not rendered a decision may conduct these activities under the permit beyond the period prescribed in § 86.11(c) (relating to general requirements for permits) if:

(3) The operations are conducted in compliance with terms and conditions of the permit, Chapter 13, the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.~~25~~**19b**), 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 Dam Safety and Encroachments Act (32 P. S. § § 693.1—693.27) and the Air Pollution Control Act (35 P. S. § § 4001—4015).

§ 86.17. Permit and reclamation fees.

(e) In addition to the bond established under § § 86.143, 86.145, 86.149 and 86.150 and subject to the exception provided for in § 86.283(c) (relating to procedures), the applicant for a permit or a permit amendment shall pay a per acre reclamation fee for surface mining activities except for the surface effects of underground mining. This reclamation fee will be assessed for each acre of the approved operational area and shall be paid by the applicant prior to the Department's issuance of a surface mining permit. If a permit amendment results in an increase in the approved operational area, the reclamation fee will be assessed on the increased acreage and shall be paid by the operator prior to the Department's issuance of the permit amendment.

(2) After the end of each fiscal year, the Department will prepare a fiscal-year report containing a financial analysis of the revenue and expenditures of the Reclamation Fee O&M Trust Account for the past fiscal year and the projected revenues and expenditures for the current fiscal year. **[Beginning with the report for fiscal year 2008-09, the]**~~The~~ report will include the Department's calculation of the required amount of the reclamation fee, **[and]** the proposed adjustment of the reclamation fee amount, **and information necessary for determining the need to supplement the funding of the Reclamation Fee O&M Trust Account. The need to supplement the funding of the Reclamation Fee O&M Trust Account will be based on the need to offset an increase in the reclamation fee and the need to provide for long term operations at ABS Legacy sites.** The fiscal-year report will be submitted to the members of the Mining and Reclamation Advisory Board for their review and comment and will be published on the Department's web site. Notice of the report's availability will be published in the *Pennsylvania Bulletin*. The Department will review the fiscal-year report at a meeting of the Mining and Reclamation Advisory Board.

§ 86.121. Areas exempt from designation as unsuitable for surface mining operations.

This section and § § 86.122—86.129 do not apply to areas on which:

(2) Surface mining operations have been authorized by a valid permit issued under The Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.19**[a]b**), the Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66), The Clean Streams Law (35 P. S. § § 691.1—691.1001) or The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § § 1406.1—1406.21).

§ 86.155. Scope.

This section and § § 86.156—86.162**[a]c** and 86.165—86.168 establish the minimum standards for the form of the bond for mining and reclamation activities, and the terms and conditions applicable to bonds and liability insurance.

§ 86.159. Self-bonding.

(k) The self-bond shall be in a form prepared and approved by the Department and may contain special conditions as the Department may require to assure the Commonwealth's interests are fully protected. The self-bond, in addition to another term or condition of forfeiture contained in a bond required by this subchapter, shall contain the following terms and conditions:

(2) Liability under the self-bond shall be conditioned on:

(i) The applicant faithfully performing the following requirements:

(A) The Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.**[31]19b**).

§ 86.162b. Land Reclamation Financial Guarantees (Editor's note: This section is new and printed in regular type to enhance readability).

(a) The Department will designate funds in the Land Reclamation Financial Guarantee Account to underwrite Land Reclamation Financial Guarantees.

(b) The funds in the Land Reclamation Financial Guarantee Account will be used to cover obligations for all existing sum-certain financial guarantees needed to facilitate the implementation of full-cost bonding previously issued by the Department.

(c) The Department may issue Land Reclamation Financial Guarantees to financially assure the bonding obligations of qualified surface coal mining operators engaged in surface mining activities under § 86.143 (relating to requirement to file a bond).

(d) The Department will hold in reserve in the Land Reclamation Financial Guarantee Account funds that are not designated to underwrite Land Reclamation Financial Guarantees.

(e) The Department will use funds held in reserve in the Land Reclamation Financial Guarantee Account to:

(1) Assure the availability of funds to cover reclamation liabilities where there is a mine operator bond forfeiture under § 86.181 (relating to general).

(2) Underwrite sum-certain financial guarantees available under Bioenergy Crop Bonding implemented by § 86.162c (relating to bioenergy crop bonding).

(3) Transfer funds available in the Land Reclamation Financial Guarantee Account to the Reclamation Fee O&M Trust Account.

(f) In administering the Land Reclamation Financial Guarantee Account, the Department will not:

(1) Issue Land Reclamation Financial Guarantees for a permit in excess of 50% of the required bond amount for that permit, which is the Permit Limit.

(2) Issue additional Land Reclamation Financial Guarantees to a surface mining operator in excess of the Operator Limit, which is exceeded if the aggregate amount of Land Reclamation Financial Guarantees on permits issued to the operator exceeds 30% of the designated amount in the Land Reclamation Financial Guarantee Account.

(3) Issue additional Land Reclamation Financial Guarantees in excess of the Program Limit, which is exceeded when the aggregate amount of outstanding Land Reclamation Financial Guarantees is greater than the current designated amount in the Land Reclamation Financial Guarantee Account divided by the historical rate of mine operator bond forfeiture under § 86.181 (relating to general), plus a margin of safety determined by the Department.

(g) Any existing sum-certain financial guarantee needed to facilitate the implementation of full-cost bonding previously issued by the Department shall be converted into a Land Reclamation Financial Guarantee subject to the following:

(1) If the conversion results in a Land Reclamation Financial Guarantee exceeding the Permit Limit established in subsection (f)(1), the Land Reclamation Financial Guarantee amount does not need to be reduced, but the permit will not be eligible for additional

Land Reclamation Financial Guarantees until the total amount of the Land Reclamation Financial Guarantees for the permit is under the Permit Limit.

(2) If the conversion results in a Land Reclamation Financial Guarantee for an operator exceeding the Operator Limit established at subsection (f)(2), the Land Reclamation Financial Guarantee does not need to be reduced, but the operator will not be eligible for additional Land Reclamation Financial Guarantees until the total amount of the Land Reclamation Financial Guarantees for the operator is under the Operator Limit.

(h) The Department will periodically, but no less frequently than every five years, or upon request by the Mining and Reclamation Advisory Board, prepare a report containing a financial analysis of the revenue and expenditures for the Land Reclamation Financial Guarantee Account.

(1) The report will evaluate the Permit Limit, Operator Limit, Program Limit, and the annual payment percentage rate referenced in subsection (m)(1) for Land Reclamation Financial Guarantees.

(2) The report will be submitted to the members of the Mining and Reclamation Advisory Board for their review and advice.

(3) The report will be published on the Department's website.

(4) Notice of the report's availability will be published in the *Pennsylvania Bulletin*.

(5) The Department will review the report at a public meeting of the Mining and Reclamation Advisory Board.

(6) If the Department's review of the report at a public meeting of the Mining and Reclamation Advisory Board results in a change to the Permit Limit, Operator Limit, Program Limit, or the annual payment percentage rate, the Department will publish a notice of the changes in the *Pennsylvania Bulletin*.

(7) Changes to the Permit Limit, Operator Limit, Program Limit, or the annual payment percentage rate will become effective upon publication in the *Pennsylvania Bulletin*.

(i) The Department may transfer interest earned and payments collected and deposited in the Land Reclamation Financial Guarantee Account into the Reclamation Fee O&M Trust Account established under §§ 86.17 and 86.187 to supplement the funding of the Reclamation Fee O&M Trust Account consistent with §§ 19.2 (b)(5) and 19.2 (b)(6) of the act (52 P.S. § 1396.19b(b)(5) and 52 P.S. § 1396.19b(b)(6)).

(j) The Department will provide information about any proposed transfer to the Reclamation Fee O&M Trust Account to the Mining and Reclamation Advisory Board and solicit advice from Mining and Reclamation Advisory Board before making such transfer.

(k) To be eligible for a Land Reclamation Financial Guarantee, a surface coal mining operator shall demonstrate the following:

(1) The mine operator holds a valid coal mining license issued under section 3.1 of the act (52 P. S. § 1396.3a).

(2) The mine operator, a related party, a person who owns or controls the operator, or a person who is owned or controlled by the operator satisfies the requirements of subsections 86.37(a)(8)–(11) and (16) (relating to criteria for permit approval or denial).

(3) The mine operator has met its reclamation obligations and made timely payments for the remaining financial guarantee program established under section 4.12 of the act (52 P. S. § 1396.41) or has made timely payments for Land Reclamation Financial Guarantees; or

(4) For operators that have not previously obtained a remaining financial guarantee under section 4.12 of the act (52 P. S. § 1396.41) or a Land Reclamation Financial Guarantee, the operator shall demonstrate appropriate experience in surface coal mining and reclamation by showing that it has had a coal mining license under section 3.1 of the act (52 P. S. § 1396.3a) for at least five years and that the operator would be able to obtain a surety bond otherwise required under this chapter by submitting:

(i) a surety bond for a portion of the remaining reclamation liability for the proposed site; or

(ii) a letter of acceptance from a surety company licensed to do business in this Commonwealth and which writes bonds for the reclamation of mine sites located in this Commonwealth. The acceptance letter shall indicate the complete name and address of the surety company and state that the surety company would write the bond.

(l) An application for a Land Reclamation Financial Guarantee shall include a description of:

(1) The environmental and safety hazards of the site for which a guarantee is proposed.

(2) The availability of coal reserves at the site.

(3) Any prior denials of surety coverage.

(m) Obtaining a Land Reclamation Financial Guarantee is subject to the following:

(1) A mine operator shall make annual payments to the Department at a rate of 1.5% of the total amount of the Land Reclamation Financial Guarantee.

(2) The first annual payment shall be due upon the operator's receipt of notice of the Department's approval of the operator's application to obtain a Land Reclamation Financial Guarantee. Payments shall be made annually thereafter concurrent with the permit anniversary date or in accordance with a schedule determined by the Department.

(3) The operator shall be 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 through 86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).

(4) Payments are not refundable and will be deposited into the Land Reclamation Financial Guarantee Account to be used in the event of mine operator bond forfeiture. Excess payments may be transferred by the Department to the Reclamation Fee O & M Trust Account consistent with § 19.2 (b)(6) of the act (52 P.S. § 1396.19b(b)(6)).

(5) The operator shall not substitute Land Reclamation Financial Guarantees for existing collateral or surety bonds.

(n) The Department may, after soliciting advice from the Mining and Reclamation Advisory Board and publication in the *Pennsylvania Bulletin*, adjust the annual payment percentage rate referred to in subsection (m)(1) in order to assure financial stability of the Land Reclamation Financial Guarantee Account and to cover the Department's costs to administer the guarantees.

(o) The Department will reduce or release an obligation covered by a Land Reclamation Financial Guarantee prior to any other bond submitted by the operator to cover the reclamation obligations of a permit, except that remaining financial guarantees issued under section 4.12 of the act (52 P. S. § 1396.41) will be released before Land Reclamation Financial Guarantees.

(p) If a post-mining pollutional discharge develops on a permit for which a Land Reclamation Financial Guarantee has been obtained, the operator shall, within 90 days of receipt of written notice by the Department, provide to the Department a separate bond or alternative financial assurance mechanism to cover the long-term treatment costs associated with the discharge or replace the Land Reclamation Financial Guarantee with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge.

(q) Upon mine operator bond forfeiture under § 86.181 (relating to general), the Department will declare forfeit the specified amount of the Land Reclamation Financial Guarantee for the permit in the Land Reclamation Financial Guarantee Account in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

(r) The Department's declaration of forfeiture under § 86.181 (relating to general) may not discharge an operator's obligation to meet the requirements of this chapter or other requirements under the act.

(s) Upon declaration of forfeiture, the Department will use the bond money posted by the operator, the specified amount of the Land Reclamation Financial Guarantee, and any other financial assurance mechanisms to complete the reclamation of the mine site in accordance with the procedures and criteria in §§ 86.187 through 86.190.

(t) The Department may suspend the issuance of Land Reclamation Financial Guarantees upon notice in the *Pennsylvania Bulletin* when the number of participating permits declared forfeit under this section equals the number of participating permits multiplied by the historical rate of mine operator bond forfeiture plus a margin of safety. Issuance of Land Reclamation Financial Guarantees may resume after the Department conducts an evaluation which demonstrates that adequate funding is available. The Department's evaluation will take into account advice received from the Mining and Reclamation Advisory Board.

(u) The Department will discontinue the issuance of Land Reclamation Financial Guarantees and notice will be published in the *Pennsylvania Bulletin* if 25% or greater of the outstanding bond obligation for all Land Reclamation Financial Guarantees is declared forfeit under § 86.181 (relating to general).

(v) The Department will not approve additional Land Reclamation Financial Guarantees if Land Reclamation Financial Guarantees are discontinued. Outstanding Land Reclamation Financial Guarantees will remain in effect until released under §§ 86.170 through 86.175.

§ 86.162c Bioenergy Crop Bonding (Editor's note: This section is new and printed in regular type to enhance readability).

(a) A permit is eligible for Bioenergy Crop Bonding at no cost to a surface mining permittee if the applicant demonstrates the following:

(1) The site is a remining site as defined in § 86.252.

(2) Stage 2 bond release has been achieved at the remining site.

(3) Bioenergy crops have been grown at the remining site including:

(i) switchgrass, camelina, or canola; or

(ii) other bioenergy crops grown to produce feedstock for biofuels, including biodiesel and ethanol, and biomass for electricity generation.

(4) Water treatment liability has not been triggered under Chapter 87, Subchapter F; Chapter 88, Subchapter G; or Chapter 90, Subchapter F.

(b) An application for Bioenergy Crop Bonding shall provide the following:

- (1) Verification that the entire permitted area has achieved Stage 2 bond release consistent with § 86.174(b).
- (2) A demonstration that the crops grown are bioenergy crops.
- (3) Crop-yield data that demonstrates that the bioenergy crops are achieving acceptable crop production.
- (4) A demonstration that all temporary structures have been reclaimed.
- (5) A demonstration that there are no post-mining polluttional discharges or that all liability associated with post-mining polluttional discharges is fully covered with a full-cost bond or a fully-funded post-mining treatment trust.
- (6) Acknowledgement that the permittee intends to apply for final release of the Bioenergy Crop Bonding in a timely manner.

(c) Upon approval of a Bioenergy Crop Bonding application, the Department will release the existing bond held for Stage 3 liability.

(d) The liability period under Bioenergy Crop Bonding may not exceed five years. Permits with a bond liability period greater than five years are not eligible for Bioenergy Crop Bonding because of the risk of water pollution (25 Pa. Code §§ 86.151(b)(1); 86.151(c)).

(e) Bioenergy Crop Bonding for a permit shall expire no later than 120 days after the expiration of the 5-year liability period.

(f) Bioenergy Crop Bonding shall be replaced if the final bond release is not achieved upon the expiration of Bioenergy Crop Bonding.

§ 86.182. Procedures.

(h) If the amount forfeited is:

(2) More than the amount necessary to complete the reclamation, the excess funds will be used by the Department, as approved by the Secretary, for any of the purposes provided in section 18(a) of the act (52 P. S. § 139716.18(a)).

§ 86.185. Preservation of remedies.

Remedies provided in law for violation of but not limited to the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.**[31]19b**), The Clean Streams Law (35 P. S. § § 691.1—691.1001), the Air Pollution Control Act (35 P. S. § § 4001—4015), the Dam Safety and Encroachments Act (32 P. S. § § 693.1—693.27), the Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66), the Solid Waste Management Act (35 P. S. § § 6018.101—6018.1003), and the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § § 1406.1—1406.21), the regulations adopted thereunder, or the conditions of the permits, are expressly preserved. Nothing in this subchapter may be construed as an exclusive penalty or remedy for the violations of law. No action taken under this subchapter may waive or impair another remedy or penalty provided in law.

§ 86.187. Use of money.

(a) Moneys received from fees, fines, penalties, bond forfeitures and other moneys received under authority of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.**[31]19b**), and interest earned on the moneys, will be deposited in the Fund.

(1) Moneys received from the reclamation fees required by § 86.17(e) (relating to permit and reclamation fees), and the interest accrued on these monies, will be deposited into a separate subaccount within the fund called the Reclamation Fee O&M Trust Account.

(i) The Department will deposit into the Reclamation Fee O&M Trust Account, up to \$500,000 in a fiscal year, the moneys collected from civil penalties assessed by the Department under the Surface Mining Conservation and Reclamation Act less the percentage of those penalty moneys due the Environmental Education Fund under section 8 of the Environmental Education Act (35 P. S. § 7528). If the amount of penalty moneys collected exceeds \$500,000 during a fiscal year, the Department may deposit the amount collected in excess of \$500,000 into the fund and use the excess amount in accordance with paragraph (3).

(ii) The Department may deposit into the Reclamation Fee O&M Trust Account a portion, to be determined at the Department's discretion, of the interest earned on other moneys in the fund.

(iii) The Department may deposit other moneys into the Reclamation Fee O&M Trust Account, including appropriations, donations, or, the fees collected for **[sum-certain financial guarantees]Land Reclamation Financial Guarantees implemented by § 86.162b (relating Land Reclamation Financial Guarantees)** needed to facilitate full-cost bonding in accordance with applicable law.

§ 86.232. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Coal mining laws—Those provisions of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.~~311~~**19b**), The Clean Streams Law (35 P. S. § § 691.1—691.1001), the Air Pollution Control Act (35 P. S. § § 4001—4015), the Dam Safety and Encroachments Act (32 P. S. § § ~~6018.101—6018.1003~~**693.1-693.27**), the Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66), the Bituminous Coal Mine Subsidence and Land Conservation Act (52 P. S. § § 1406.1—1406.21) and the Solid Waste Management Act (35 P. S. § § 6018.101—6018.1003), related to the regulation of surface and underground coal mines and facilities, and The Land and Water Conservation and Reclamation Act (32 P. S. § § 5101—5121) related to abandoned mine lands reclamation for which Federal grants have been made under Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. § § 1231—1243).

§ 86.252. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.19~~a~~**a**).

§ 86.358. Suspension and revocation.

(a) The Department may suspend or revoke a license for the following reasons:

(3) Failure to comply with the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1391.1—1396.19~~a~~**a**) or the regulations thereunder.

CHAPTER 87. SURFACE MINING OF COAL

§ 87.1. Definitions.

SMCRA—The Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.125119b).

§ 87.205. Approval or denial.

(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—1396.125119b), Chapter 86 (relating to surface and underground coal mining: general) or Subchapters A and C—E, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

CHAPTER 88. ANTHRACITE COAL

§ 88.482. Definitions.

Operator—A person or municipality engaged in underground mining activities as a principal, as distinguished from an agent or independent contractor. When more than one person is engaged in coal mining activities in a single operation, they shall be deemed jointly and severally responsible for compliance with the provisions of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.131119b), The Clean Streams Law (35 P. S. § § 691.1—691.1001) and the Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66).

§ 88.505. Approval or denial.

(b) An authorization may be denied under this subchapter if granting the authorization will, or is likely to, affect 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.~~25~~**19b**), Chapter 86 (relating to surface and underground coal mining: general), Chapter 87, Subchapter B (Reserved) or Subchapters A—C, for the proposed pollution abatement area or other areas or discharges in the vicinity of the proposed pollution abatement area.

CHAPTER 89. UNDERGROUND MINING OF COAL AND COAL PREPARATION FACILITIES

§ 89.5. Definitions

Operator—A person or municipality engaged in underground mining activities as a principal, as distinguished from an agent or independent contractor. When more than one person is engaged in coal mining activities in a single operation, they shall be deemed jointly and severally responsible for compliance with the provisions of the Surface Mining Conservation and Reclamation Act (52 P. S. § § 1396.1—1396.~~31~~**19b**), The Clean Streams Law (35 P. S. § § 691.1—691.1001) and the Coal Refuse Disposal Control Act (52 P. S. § § 30.51—30.66).

CHAPTER 90. COAL REFUSE DISPOSAL

§ 90.305. Application approval or denial.

(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—1396.19~~a~~**b**), 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.

CHAPTER 211. STORAGE, HANDLING AND USE OF EXPLOSIVES

§ 211.121. General requirements.

(c) A permit issued under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19**a|b**), or the Noncoal Surface Mining and Conservation and Reclamation Act (52 P. S. §§ 3301—3326), and the regulations promulgated thereunder, authorizing blasting activity shall act as a blasting activity permit issued under this chapter.

October 7, 2014

David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

Re: Proposed Rulemaking: Land Reclamation Financial Guarantees and Bioenergy Crop Bonding
(#7-489)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission (Commission). This proposal is scheduled for publication in the *Pennsylvania Bulletin* on October 25, 2014, with a 30-day public comment period. The Environmental Quality Board (Board) adopted this proposal on July 15, 2014.

The enclosed proposed rulemaking is authorized by the Surface Mining Conservation and Reclamation Act (SMCRA), the Clean Streams Law, the Coal Refuse Disposal Control Act and the Administrative Code of 1929. This rulemaking corrects citations to statutes as they appear in Chapters 77, 86, 87, 88, 89, 90 and 211; it proposes regulations to implement Act 95 of 2012; and it proposes regulations to implement Act 157 of 2012.

Act 95 amended SMCRA by adding section 4.14 (52 P.S. § 1396.4n) which allows surface coal mining operators to seek reclamation bond coverage at no cost when reclaiming a remining site with bioenergy crops. This rulemaking will provide the framework for implementing Act 95's bioenergy crop reclamation incentive. Act 157 is a statutory amendment that makes Land Reclamation Financial Guarantees (LRFG) available to operators. Act 157 requires that the Environmental Quality Board promulgate regulations to implement the LRFG program, a bonding assistance program underwritten by existing commonwealth funds and premiums paid by surface mining operators. LRFGs offer financial guarantees to assure the bonding obligations of qualifying operators, and this rulemaking proposes the framework for providing LRFGs to operators.

Obtaining Bioenergy Crop Bonding and LRFGs is optional for operators. Bioenergy Crop Bonding is offered at no-cost, and there is a minimal fee required to obtain an LRFG. As such, compliance costs will be minimal. In addition, the proposed compliance and reporting requirements of these financial guarantee programs are tailored to accommodate small business. There are about 500 licensed surface coal mine operators in Pennsylvania that would be subject to this proposal, and all but five are small businesses. Compliance assistance will be provided

through the routine interaction with trade groups and individual applicants. It is not anticipated that the rulemaking will increase costs.

The proposed rulemaking will establish eligibility requirements, program limits and operational standards. Additionally, the rulemaking includes a potential funding source for the legacy of the Alternate Bonding System (ABS), where the Commonwealth has a substantial long-term obligation to provide money for the treatment of polluted discharges. The potential funding sources are from the premiums paid by coal mine operators for the LRFGs and the transfer of money from the Gross Receipts Tax to the treatment fund.

The Department of Environmental Protection (Department) collaborated with the Mining and Reclamation Advisory Board's (MRAB) Regulation, Technical and Legislative committee to develop this proposed rulemaking. MRAB provided advice to the Department, identifying the implementation of the financial guarantees as a priority and identifying the key concepts to be included in a regulation. The MRAB voted for the proposed rulemaking to proceed at its October 24, 2013 and provided one recommendation to a portion of the rulemaking implementing Act 157. While the specific language of the recommendation was not adopted, the intent of the language was captured in the proposed rulemaking.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the 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 made by the Commission, as well as the Committees and public commentators, prior to final adoption of this rulemaking.

Please contact me by e-mail at ledinger@pa.gov or by telephone at 717.783.8727 if you have any questions or need additional information.

Sincerely,



Laura Edinger
Regulatory Coordinator

Enclosures



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
 THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7-489 Land Reclamation Financial Guarantees and Bidenergy Crop Bonding
 SUBJECT:
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- 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

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/7/14	<u>Pamela Davis</u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Rep. Ron Miller
10-7-14	<u>Terri Y. Kell</u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Rep. Greg Vitali
10-7-14	<u>Patti Gilroy</u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Coene Yaw
10/7/14	<u>Wm. J. Laude</u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator John Yudichak
10/7/14	<u>K. Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
10/7/14	<u>Courne Inant</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

